

(2016) 05 RAJ CK 0031

RAJASTHAN HIGH COURT

Case No: Civil Writ Petition No. 1403 of 1998

R.S. Industries (Rolling Mills) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: May 26, 2016

Citation: (2016) 338 ELT 666

Hon'ble Judges: M.N. Bhandari and J.K. Ranka, JJ.

Bench: Division Bench

Advocate: S/Shri R.K. Salecha and Dheeraj Verma, Advocates, for the Petitioner; S/Shri R.D. Rastogi, ASG with Ashish Kumar, Ms. Archana on behalf of Anil Mehta, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

1. An application filed for amendment in the writ petition is not pressed and is accordingly dismissed.

2. By this writ petition, a challenge is made to the Notification Nos. 33/97-C.E. (N.T.) and 34/97-C.E. (N.T.), dated 1-8-1997. It is to challenge Rule 5 of the Hot Re-rolling Mills Annual Capacity Determination (Amendment) Rules, 1997. The further prayer is made to hold Rule 96ZP(3) of the Rules, 1997, to be unlawful as it is not in consonance with the provisions of Section 3A(3) of the Act, 1944. As a consequence of quashing of the Notification, restore the benefits given to the petitioner under Notification Nos. 49/97 and 50/97, dated 1-8-1997.

3. It is admitted by the parties that the controversy raised herein, was considered by different High Courts. The Karnataka High Court had decided the issue by a detailed judgment in the case of **Meenakshi Steel Re-Rolling Mills v. Union of India - 2015 (330) E.L.T. 138 (Kar.)**. The challenge to Rule 5 of the Rules, 1997, showing it to be ultra vires to Section 3A of the Act, 1944, has not been accepted. Subsequently, same view was taken in other case of **Bhuwalka Steel Industries Ltd. v. Union of**

India - 2015 (323) E.L.T. 73 (Kar.).

4. The learned counsel for the parties submits that an appeal has been preferred against the judgment which is pending before the Apex Court. The present writ petition was deferred by this Court from time to time finding that before the Madras High Court, Revenue had shown pendency of similar issue before various High Courts, thus, to make an application before the Apex Court to consolidate the cases for its hearing. This Court was also informed about it and detailed order was drawn in reference to the order passed by the Madras High Court. The Revenue was asked to seek instruction about their intention to move an application before the Apex Court to consolidate all the cases pending before various High Courts.

5. Learned counsel appearing for the Revenue submits that no such application for consolidation of cases has been made in reference to the petitions pending before this Court. In fact the issue has already been determined by the Karnataka High Court by a detailed judgment and now is pending consideration before the Apex Court, there exists no reason to make such an application. The learned counsel for the petitioner submits that if the appeals are pending before the Apex Court against the judgment of the Karnataka High Court, then while covering this petition by the judgment in the case of Meenakshi Steel (supra), it may be observed that the outcome of the pending SLP before the Apex Court would apply to these cases also so as to avoid multiplicity of litigation.

6. If this Court takes a view similar to what has been taken by the Karnataka High Court, the petitioner would be required to file an appeal before the Apex Court, multiplying the litigation, which otherwise can be saved by accepting the prayer made above and if such a direction is given, the petitioner would be satisfied with it. The learned counsel appearing for the Revenue submits that the issue having been decided by the Karnataka High Court, and according to him even by Madras High Court, the judgments of those Courts need to be applied. He has, however, agreed that while covering this writ petition by the judgments of the Karnataka High Court in the case of Meenakshi Steel (supra) and Bhuwalka Steel (supra), it may be made subject to final outcome of the appeals before the Apex Court. If the judgments of the Karnataka High Court are reversed, the judgments aforesaid should apply to the petitioner as well. It is to avoid the multiplicity of litigation.

7. We have considered the rival submissions of the parties and perused the record.

8. The writ petition is now old by 18 years, though on earlier occasion, the hearing was deferred in reference to an order in the pending case before the Madras High Court. The order was passed by the Madras High Court when Revenue had shown its intention to make an application before the Apex Court to consolidate hearing of writ petition pending before different High Courts. The Revenue was directed to seek instruction as to whether they intend to make an application in pending writ petition also. On the direction of the Court, the instruction was sought and the

learned counsel appearing for the Revenue informed that no such application has been moved. It is for the reason that the validity of the Rule has already been considered and found to be intra vires by the Karnataka High Court.

9. In the light of the aforesaid, learned counsel for the parties were asked to argue the case finally because a writ petition being old by 18 years cannot be kept pending. The learned counsel for the petitioner is fair enough to state that the issue having been considered and decided by the Karnataka High Court regarding same challenge, this Court may apply the said judgment. To avoid multiplicity of litigation, the final judgment of the Apex Court on the issue in the pending appeal in the case of Bhuwalka Steel (supra) be ordered to be applied. If the appeal therein is allowed by the Apex Court, this writ petition should be treated to have been allowed automatically, though at present he would be treated to have been dismissed in reference to the judgment of Karnataka High Court. The Revenue has agreed to the aforesaid.

10. In view of the above, the writ petition is ordered to be governed by the judgments of the Karnataka High Court in the cases of Meenakshi Steel (supra) and Bhuwalka Steel (supra), however, this order is to be governed finally by the outcome of the pending appeal before the Apex Court in the case of Bhuwalka Steel or any other appeal on the same challenge. If finally the appeal is allowed by the Apex Court, the writ petition would also be treated as allowed. However, if the appeal is dismissed by the Apex Court, there would be no change in the judgment. In view of the above, the outcome of this petition would be governed finally by the outcome of the appeal pending before the Apex Court on the same challenge. The direction aforesaid is being given to avoid multiplicity of litigation.

11. With the aforesaid, the writ petition stands disposed of. It is however made clear that all other issues other than the validity of Rule 5 of Excise Rules, the petitioner would be at liberty to contest them before the Commissioner concerned, Commissioner (Appeals) & CESTAT, if he so wishes.