
(2000) 02 AHC CK 0186

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 525 of 1983

Kanoria Chemicals and Ind. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Feb. 4, 2000

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 3, 4
- Constitution of India, 1950 - Article 226

Citation: (2000) 68 ECC 442

Hon'ble Judges: R.K. Agrawal, J; M.C. Agrawal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. K. Agrawal, J.

The petitioner M/s Kanoria Chemicals & Industries Limited, has filed the present writ petition for quashing the order No. (i) 22/Demand/78 dated 8.12.1978 under C.No. V-14-A (18) 208/77/11965 dated 26.12.1978 (Annexure A. 4); (ii) 21 - Demand/ 78 dated 7.12.1978 issued under C.No. V-14-B (18) 207/77/11957 dated 26.12.1978 (Annexure A.5); (iii) 10-Demand /78 dated 28.8.1978 issued under C. No. V-14.AA (3) 141/78/6854 dated 1.9.1978 (Annexure A.6); (iv) Order No. Nil dated February 1982 issued under C.No. V-14-B(3) 130/79/1145 dated 1.3.82 issued under C.No V-14-AA (3) 129/79/1138 dated 1.3.1982 (Annexure A.8) Order No. Nil dated February 1982 issued under C.No. V-14-H (3) 128/79/1148 dated 1.3.1982 (Annexure A.9) and the orders passed in appeal by the Appellate Collector of Central Excise New Delhi No. 1080-1081-CE-79 issued under C. No. 12 and 13-CE/Appeal/Alld/79 dated 22.10.1079 (Annexure A.10) and the order passed in revision petition by the Government of India vide Order No. 495/1982 dated 31.8.1982 issued under F.No. 195/2/793/79-CX.V dated 8.12.1982 (Annexure A.12).

2. The petitioner has further sought writ of mandamus directing the Appellate Collector, Central Excise, New Delhi not to proceed with the 4 appeals filed against Order C. No. (i) 10-Demand/78 dated 28.8.1978, issued under C.No. V-14-AA (3)141/78/6854 dated 1.9.1978(Annexure A.6); (ii) Order No. Nil dated February 82 issued under C.No. V-14-B(3) 130/79/1145 dated 1.3.1982 (Annexure A.7); (iii) Order No. Nil dated February 1982 issued under C.No. V-14-AA (3) 129/79/1138 dated 1.3.1982 (Annexure A.8); (iv) Order No. Nil dated February 1982 issued under C. No. V-14-H (3) 128/79/1148 dated 1.3.1982 (Annexure A.9).

3. We have heard Shri A.P. Mathur learned Counsel for the petitioner and Shri Surya Prasad Kesharwani, learned Additional Standing Counsel for the respondents.

4. The brief facts giving rise to present petition are that the petitioner a public limited company is engaged in the manufacture of Caustic Soda, Chlorine, Stable Bleaching Powder on which a duty of Central Excise u/s 3 of the Central Excise and Salt Act; 1944 (hereinafter referred to as the Act) is leviable at the rates set forth in the 1st Schedule (hereinafter referred to as the Central Excise Tariff) of the Act. The rates of duty on Caustic Soda, Chlorine and Stable Bleaching Powder have been specified against items 14-B, 14-H (ii) and 14-AA (1) of the Central Excise Tariff respectively. Where the duty is chargeable on excisable goods with reference to value, such value is, determined according to the normal price of the goods as determined u/s 4 of the Act. The Central Government under Rule 8(1) of the Central Excise Rules, 1944 (hereinafter referred to as the Rules) is empowered to exempt from the whole or any part of duty on excisable goods from time to time by notification in the Official Gazette. In exercise of the powers under Rule 8(1), the Central Government vide Notification No. 198/76-CE. dated 16.6.1976 had exempted the excisable goods of the description specified in column 3 of the table annexed to the said notification and falling under such item number of the Central Excise Tariff as were specified in the corresponding column 2 of the said table and cleared from one or more factories in excess of base clearance by or on behalf of the manufacturer, from so much of the duty leviable thereon as was in excess of 75% of such duty subject to the condition laid down in the said notification. The items manufactured by the petitioners namely Caustic Soda, Chlorine and Stable Bleaching Powder were included in column 3 of the table annexed to the notification.

5. The petitioners after complying with the conditions laid down in the aforesaid notification became eligible to claim exemption upto the extent of 25% from the payment of the duty on manufacture of aforesaid three items which were in excess of the base clearances.

6. It may be mentioned here that under the notification there was no stipulation that the benefit of concession of duty will be passed on to the consumers in order to enable the manufacture to avail exemption. However, a press note was issued by the Government of India wherein the Central Excise authorities were instructed how

to calculate the duty in the cases where the manufacturer was not passing on the benefit of exemption of duty in whole or in part to the buyers. The relevant contents of the aforesaid press note are reproduced as under:

In June, 1976, Government had brought into force a scheme under which manufacturers of specified commodities would be entitled to 25% reduction in the Central Excise duty leviable on clearances of their manufacturers which were in excess of the clearances in the "base period" subject to prescribed conditions. A question has arisen whether the duty relief can be retained by the manufacturers. Government wishes to clarify that it is for the manufacturer to decide whether the benefit of the duty exemption earned by him should be retained by him or not. However, it may be noted that in the event of the manufacturer not passing on the benefit in whole or in part to the buyer, the assessable value of the goods will have to be adjusted accordingly and the duty computed on the assessable value so adjusted. The assessable value will be worked out by the following formula:

$$\text{Assessable value} = \frac{\text{Sale price} \times 100}{(\text{Cum duty}) (100 + \text{reduced rate of duty})}$$

The duty thereon will be worked as follows:

$$\frac{\text{Sale Price} \times \text{reduced rate}}{(\text{Cum duty}) (100 + \text{reduced rate of duty})}$$

The aforesaid considerations are applicable only in the case of goods subject to ad valorem rates of duty in respect of which no tariff value has been fixed. The Central Excise authorities have been suitably instructed.

7. Acting on the basis of the aforesaid Press Note the Superintendent, Central Excise issued six show cause notices to the petitioners requiring it to show cause to the Assistant Collector, Central Excise Mirzapur as to why the duty of Central Excise mentioned in the respective show cause notices be not leviable on Caustic Soda, Chlorine, and Stable Bleaching Powder cleared by the petitioner during the period mentioned therein as benefit of concessional rate of duty provided in Notification No. 198/76 dated 16.6.1976 had not been passed on to the consumers.

8. The petitioner submitted its reply and claimed that it is not liable to pay the duty as demanded in the show cause notices. It also challenged the formula given by the Government of India in the Press Note for determining the assessable value. However, the Assistant Collector, Central Excise, Mirzapur did not accept the explanation given by the petitioner and confirmed the demand by passing six separate orders which have been filed as Annexures A-4 to A-9 to the writ petition.

9. Feeling aggrieved thereby the petitioner preferred six appeals before the Appellate Collector of Central Excise, New Delhi who heard two appeals out of six and vide Order dated 22.10.1979 rejected the two appeals and confirmed the order of the Assistant Collector, Central Excise, Mirzapur.

10. At the time filing of the writ petition the remaining four appeals were pending. However, this Court vide Order dated 13.4.1983 had only stayed the demand created in pursuance of the orders contained in Annexures 6 to 9 to the writ petition. The hearing of the appeals were not stayed by this Court. The learned Counsel for the petitioner was not in a position to make any statement as to whether the aforesaid appeals which were filed in the year 1979 have been decided by the Appellate Collector, New Delhi or not.

11. The petitioner filed revision petition to the Government of India against the consolidated order dated 22.10.1979 passed by the Appellate Collector, New Delhi whereby two appeals had been rejected. The Additional Secretary, Government of India rejected the revision petition vide Order dated 31.8.1982. Before the revision was decided by the Government of India the Act was amended by the Finance Act 1982. Section 47 of the Finance Act, 1982 amended Section 4 of the Act and validated by inserting an explanation with effect from 1st October 1975 and also validated the action taken during the period commencing on 1st day of October, 1975 and ending w.e.f. 27th day of February 1982. For ready reference Section 47 of the Finance Act, 1982 is reproduced below:

47. Amendment of Section 4 and validation : - (1) In Section 4 of the Central Excises Act, in Clause (d) of Sub-section (4), in Sub-clause (ii), the following Explanation shall be inserted and shall be deemed to have inserted with effect from the 1st day of October, 1975, namely:-

Explanation:- For the purpose of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of,

(a) the effective duty of excise payable on such goods under this Act; and

(b) the aggregate of effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods,

and the effective duty of excise on such goods under each Act referred to in Clause (a) or Clause (b) shall be,

(i) in a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to or reduction of duty of excise on such goods equal to any duty of excise already paid on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act is for the time being in force the duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption; and

(ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods,

(2) Any action or thing taken or done or purporting to have been taken or done at any time during the period commencing on the 1st day of October, 1975, and ending with the 27th day of February, 1982 (hereinafter in this sub-section referred to as the said period) under the Central Excises Act, shall be deemed to be and to have always been, for all purposes, as validly and effectively taken or done as if the amendment made by Sub-section (1) had been in force at all material times and accordingly, notwithstanding any thing contained in any judgment, decree or order of any Court, Tribunal or other Authority.

(a) all duties of excise levied, assessed or collected during the said period on any excisable goods under the Central Excise Act, shall be deemed to be and shall be deemed always to have been, as validly levied, assessed or collected as if the amendment made by Sub-section (1) had been in force at all material times;

(b) no suit or other proceeding shall be maintained or continued in any court for the refund of, and no enforcement shall be made by any court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the amendment made by Sub-section (1) had been in force at all material times;

(c) refund shall be made of all such duties of excise which have been collected but which would not have been so collected if the amendment made by Sub-section (1) had been in force at all material times;

(d) recovery shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded, but which would have been collected or, as the case may be, would not have been refunded, if the amendment made by Sub-section (1) had been in force at all material times.

Explanation:- For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

12. Relying upon the amendment made in Section 4 and its validation by Section 47 of the Finance Act, 1982 the Government of India rejected the revision petition filed by the petitioner by observing as under:

Government observe that whatever doubts there might have been on the issue involved are now set at rest by Section 47 of the Finance Act, 1982. Government, therefore, see no reason to interfere with the impugned order in appeal which is correct in law. The revision Application is accordingly rejected.

13. From the perusal of Section 47 of Finance Act, 1982 it would be seen that the manner in which the effective duty of excise under the Act is to be calculated has been given. Clause (i) of the Explanation inserted by Section 47 of the Finance Act, 1982, deals with a case where by a notification or order any exemption has been granted from the duty of excise under such Act, the duty of excise computed with

reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption is the effective excise duty on such goods.

14. There is no doubt that the petitioner was entitled for exemption from the payment of excise duty to the extent of 25% in respect of Caustic Soda, Chlorine, Stable Bleaching Powder which have been manufactured by it in excess of base production. The effective duty on such goods has to be computed in accordance with the newly inserted explanation to Section 4, which has been made retrospective w.e.f. 1st day of October, 1975. The period covered under six show cause notices relates from 5th March 1977 to 31st March 1979.

15. In view of the validating provisions and the retrospective amendment of Section 4 w.e.f. 1.10.1975, the authorities have rightly calculated the effective duty of excise on the goods in question. There is no error in the orders passed by the Assistant Collector, Central Excise Mirzapur or the Appellate Collector of Central Excise, New Delhi and the Government of India.

16. The learned Counsel for the petitioner, however, submitted that no opportunity of hearing to the petitioner was given by the Government of India prior to deciding the revision. Specific averment in that respect has been made in para 18 of the writ petition which has not been denied by the respondent in the counter affidavit filed on their behalf by Seva Ram, Assistant Collector, Central Excise, Mirzapur.

17. Ordinarily we would have set aside the Order dated 8.12.1982 passed by the Additional Secretary to the Government of India, New Delhi, whereby the revision filed by the petitioner had been rejected without affording opportunity of hearing to the petitioner. But, on the facts of the present case we decline to interfere in the said order in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India for the reasons that the learned Counsel for the petitioner has not been able to show or establish that if Section 4 as amended by the Finance Act, 1982 is taken into consideration, the effective duty or excise determined by the Assistant Collector is incorrect. Further the learned Counsel for the petitioner have not challenged the vires of Section 47 of the Finance Act, 1982 in the present petition and no such argument was advanced by him during the course of hearing of the petition.

18. More than 16 years have passed and no useful purpose shall be served by requiring the Government of India to pass fresh order especially when the statutory provisions have been retrospectively amended. The learned Counsel for the petitioner had not disputed the applicability of Section 47 of the Finance Act, 1982 in the present petition. We therefore, do not find any error in the orders impugned in the present writ petition.

19. In view of the above discussions this writ petition has no force and is dismissed with costs.