
(2004) 09 MP CK 0035

Madhya Pradesh High Court (Indore Bench)

Case No: Writ Petition No. 881 of 2004

Indore Wire Company Ltd.

APPELLANT

Vs

CESTAT

RESPONDENT

Date of Decision: Sept. 8, 2004

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (2005) 183 ELT 137

Hon'ble Judges: A.M. Sapre, J

Bench: Single Bench

Advocate: G.M. Chafekar, SC and Sanjeev Kohli, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.M. Sapre, J.

The challenge in this petition filed under Article 227 of the Constitution of India is to an appellate Order dated 12-3-2004 (Annexure P-15), passed by Tribunal (CE & STAT) in Appeal No. E/1847/87-B whereby the Tribunal has dismissed the appeal filed by the petitioner.

2. Heard Shri GM Chafekar, learned Senior Counsel with Shri Sanjeev Kohli, learned Counsel for the petitioner.

3. At the outset, I may observe that having heard learned Counsel for the petitioner and having carefully gone through the well reasoned Order passed by the Tribunal. I unable to notice any infirmity in the impugned appellate Order passed by the Tribunal. It is for this reason I need not repeat the entire facts in detail again in my Order to avoid repetition of same facts. Indeed the issue regarding applicability of one particular tariff entry having been properly decided with reference to stand taken by the petitioner and the factual material brought on record, there arise no

occasion to interfere in such a reasoned Order passed by the Tribunal.

4. In short and substance, the question arose before the taxing authorities under the Central Excise Act as to whether M.S. (Mild Steel) Galvanized Wire manufactured and cleared by the petitioners during 1981-82 and 1982-83 were classifiable under Tariff Item No. 33B of first schedule to the Act as contended by the department or under TI No. 26AA of the said tariff as claimed by the assessee i.e. petitioner. It is this question which was gone into before the authorities with reference to the nature, utility and use of the goods in question and accordingly, all the authorities held against the petitioner and in favour of the department. In other words, it was held that goods falls in Item No. 33B of first schedule to the Act and hence, has to be taxed accordingly. It is this view which is again assailed by the petitioner in this writ.

5. As observed supra, I am inclined to accept what the Tribunal has recorded against the petitioner.

6. In my opinion, the Tribunal has recorded its finding of fact against the petitioner with reference to material brought on record by way of factual material. It was evaluated and then appreciated for recording the finding against the petitioner. Such finding of fact which is based on proper appreciation and material, the same is not liable to be interfered within my writ jurisdiction.

7. Submission of learned Counsel for the petitioner was that some circular was not taken note of while deciding the issue which according to learned counsel had some relevance, I find no substance in this submission. Firstly, at no point of time this circular was relied on or referred to by the petitioner before any of the authorities including in first round of litigation which traveled up to this Court in W.P. No. 1358 of 1997, decided on 6-1-2004 (Annexure P-14). Secondly, this Court remanded the case to examine the factual evidence led by the petitioner as it was felt that the factual evidence was not taken note of. Thirdly, at no point of time the so-called circular was pressed in service in this long drawn litigation which continued for 20 years before several authorities. Fourthly, the issue fell for consideration was more to be decided on factual data rather than any circular and lastly, once the issue is decided on facts and evidence led properly by appellate court, no case for interference is called for. It is much more so when no illegality or perversity is noticed so as to call for its interference.

8. Petition thus fails and is hereby dismissed in limine.