
(1991) 03 CAL CK 0039

Calcutta High Court

Case No: C.R. No. 3160 (W) of 1983

I.T.C. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: March 4, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1991) 55 ELT 42

Hon'ble Judges: Ruma Pal, J

Bench: Single Bench

Advocate: Prasenjit Basu and Sanjoy Bhattacharya, for the Appellant; S. Banerjee, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ruma Pal, J.

The petitioner company manufactures inter alia Cigarettes. The registered office of the petitioner company is in Calcutta. The petitioner has a factory at Basdeopur District Mungher in the State of Bihar (hereinafter referred to as the said factory). The petitioner manufactures cigarettes at the said factory. For the purpose of marketing it's cigarettes, the petitioner makes shells, slides and Hingelids. The question to be determined in this petition is whether such shells, slides and hingelids are covered by Item 17(4) of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act). By Notification No. 66/82, dated 28-2-1982 all items under Tariff Item 17(4) of the First Schedule to the said Act were exempted from payment of excise duty except printed boxes and printed cartons (including flattened or folded printed boxes and flattened or folded printed cartons whether in assembled or unassembled condition). On 18-3-1982 the petitioner submitted a classification list under protest. It is the petitioner's case that the said shells, slides and hingelids come within the exempted category of Tariff Item 17(4).

In any event it is contended that if it is held that the said shells, slides and hingelids are excisable, then the petitioner was entitled to credit in respect thereof when the petitioner paid duty on cigarettes.

2. On 16-4-1982 an order was passed by the Assistant Collector of Central Excise, Patna directing that the Shells, Slides and Hingelids came under the excepted category of Tariff Item 17(4) of the First Schedule to the Act and was dutiable as such. The petitioner company preferred an appeal from the order dated 16-4-1982 before the Appellate Collector of Central Excise, Calcutta [now designated Collector (Appeals) Central Excise, Calcutta] being the respondent No. 5 herein. By an order dated 11-3-1983 the respondent No. 5 allowed the petitioner Company's appeal and set aside the order dated 16-4-1982. By the order dated 11-3-1983 the respondent No. 5 directed granting of consequential relief within two months from the date of the issuance of the order. This order was communicated to the petitioner company at its office in Calcutta.

3. The petitioner's grievance is two-fold that in spite of the order dated 11-3-1983(i) the Excise Authorities in Bihar were not refunding the excise duty paid by the petitioner in respect of the shells, slides and hingelids in terms of the order but, on the other hand (ii) were preventing the petitioner from removing the shells, slides and hingelids from the said factory without paying excise duty on the same.

4. This writ application was moved in April 1983. No affidavit-in-opposition has been filed by the respondents till today. However at the hearing, the respondents contested the matter through Counsel. The respondents have contended that this Court does not have the jurisdiction to entertain this writ application. The respondents have relied upon the decision of [State of Rajasthan and Others Vs. Swaika Properties and Another](#), .

5. The petitioners have contended that this Court has the jurisdiction to entertain this writ application firstly because the petitioner company's registered office is within the jurisdiction of this Court, secondly because the order dated 11-3-1983 was passed by the Appellate Authority in Calcutta and thirdly any further appeal therefrom would lie to the Tribunal in Calcutta.

6. In this writ petition the petitioners are seeking to enforce the order dated 11-3-1983. It cannot be doubted that therefore the said order itself forms a part of the cause of action within the meaning of the phrase as defined in the case of State of Rajasthan v. Swaika Properties (supra). In a recent decision of this Court in [In Re : Chowdhury Niranjan Mahapatra](#), G.N. Ray-J, (as His Lordship then was) had to consider the question of the Court's jurisdiction under Article 226 with reference to the cause of action. In that case an employee had challenged an order of punishment passed by an officer in Bombay. The order of punishment was upheld by the appellate and Reviewing Authority in Hyderabad. The Court held that both these orders formed part of the cause of action. While it is true that the inaction

complained of has taken place in Bihar nevertheless the inaction can be described as such only in relation to the mandate contained in the order of the Appellate Authority in Calcutta. The order, therefore, is an essential fact which will have to be proved by the petitioner in order to support his right to a judgment in these proceedings.

7. I, therefore, hold that this Court has the jurisdiction to entertain this application.

8. As far as the merits of the case are concerned, the respondents have not disputed the facts. There is no justification therefore, for the authorities concerned not to comply with the order of the Appellate Authority. The decision dated 11-3-1983 has not been challenged by the respondents.

9. In the case of [Orissa Forest Corporation Ltd. Vs. Asstt. Collector, Central Excise and Others](#), a Division Bench of the Orissa High Court presided over by R.N. Misra, C.J. (as His Lordship then was) held -

The demand is under the Statute and the statutory Appellate Authority on the set of facts which are common both to the period when relief was granted and the period for which the impugned demand has been made, has already determined that no levy is exigible. As long as the appellate order stands, it must be duly respected and only when the revisional authority vacates the order and holds that the decision of the Appellate Authority is wrong and the demand was justified no demand should be raised. It has been indicated no more than one occasions by the Supreme Court with reference to directions of the Appellate Tribunal under the Income Tax Act that such directions are binding and decisions rendered by Appellate Authorities should be respected by the subordinate revenue authorities and no attempt should be made to wriggle out of the binding decisions of higher authorities as long as they remain in force.

10. In the case of *Godrej & Boyce Mfg. Co, Pvt. Ltd. v. Union of India*, reported in 1984 3 ECC 263, a learned Single Judge of the Bombay High Court had to consider a situation substantially similar to the one which I have to consider. In that case after reviewing the authorities of several High Courts including this High Court, the learned Single Judge held -

The validity of the show cause notices will have to be judged as on the date of issue of these notices. At the date when these notices were issued, the question whether the secondary packing supplied by the petitioners should be included in the value of the refrigerators or not was concluded by an order of the Appellate Collector passed on 28-10-1980. The Appellate Collector was, in terms, required to consider the very same special secondary packing. The Appellate Collector had held that the value of such special secondary packing should not be included in the value of the refrigerators of the petitioners for the purpose of levy of excise duty. This finding was given in respect of an earlier period. But there was no change, either in the facts or in the law, at the time when the impugned show cause notices were issued.

The earlier order of the Appellate Collector was, therefore, binding on the Department. The department was under an obligation to follow the earlier order.

In the case of [Mercantile Express Co. Ltd. Vs. Assistant Collector of Customs and Others](#), the Calcutta High Court held that the Customs authorities were bound by their own decisions in administering taxing statutes. It observed:

The customs now say that they are not bound by their previous decisions, whether the doctrine of precedents applies in the full rigour to administrative agencies and officers, and whether a reasonable latitude should be given to them or administrative Tribunals to correct or modify their previous decisions may still remain debatable controversy in the world of law; nevertheless I am clearly of the opinion that neither the Appraiser nor the Collector of Customs can change his mind from time to time in respect of the same articles by assessing them in the case of one importer under one section and then assessing them for another importer under a different section. To allow the customs to do so will lead to utter confusion in the very basis and principles of taxation and grave uncertainty in business and foreign trade of India.

What is true of the Customs authorities is equally true of the Excise authorities, and the observations of the Calcutta High Court apply with even greater force in the case of the same assessee who is sought to be taxed differently for the same article.

11. There is no reason to differ from the views expressed by the High Courts at Orissa and at Bombay.

12. The Rule Nisi is, therefore, made absolute. There will be no order as to costs.

13. Certified copy will be made available to the petitioners as expeditiously as possible.