

(2004) 09 CAL CK 0053

Calcutta High Court

Case No: F.M.A.T. No. 2322 of 2003 and C.A. N. 8947 of 2003

Hindustan Laminators Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 2, 2004

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 35H
- Civil Procedure Code, 1908 (CPC) - Section 9

Citation: (2005) 1 CALLT 145 : (2005) 1 CHN 153 : (2005) 192 ELT 48

Hon'ble Judges: Tapan Kumar Dutt, J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: Sudhis Dasgupta, Jiban Ratan Chatterjee, Pratap Chatterjee, Mihir Lal Bhattacharyya and Moloy Roy, for the Appellant;

Final Decision: Dismissed

Judgement

Asok Kumar Ganguly, J.

Heard the learned Counsel for the petitioner at some length at the stage of admission of this appeal under Order 41, Rule 11 of CPC (hereinafter called the "Code"). By the order dated 20.06.03, which is under appeal, the learned Judge of 3rd Bench of the City Civil Court at Calcutta held that the Civil Court cannot entertain the suit, being Title Suit No. 1653 of 2002, as the Civil Court's jurisdiction is barred u/s 9 of the Code. As such, the learned Judge refused to pass any order on the injunction petition filed by the appellant and rejected the same with costs.

2. The appeal is against that judgment.

3. The learned Counsel appearing in support of the appeal argued that the learned Trial Judge erred in law while construing the provisions of Section 9 of the Code. The learned Counsel submitted that unless there is any specific statutory bar to the jurisdiction of the Civil Court, the Court should have entertained the civil suit. It was also urged that, in this case, there is no such statutory bar. It was also argued that

the implied bar of jurisdiction cannot be assumed rightly unless such an implication is apparent or obvious. In support of such contentions, the learned Counsel cited several decisions.

4. Before considering the decisions, the Court proposes to look into the bare facts of the case.

5. From the facts of this case, it appears that initially a show-cause notice was issued by the Collector of Central Excise, Calcutta-(I). It was stated in the said show-cause notice that the appellant was engaged in the manufacture of HDPE laminated jute fabrics and in the said notice, they were asked to show cause why central excise duties amounting to Rs. 92,20,349.28/- (being basic excise duty of Rs. 85,34,832.59/-, plus a special excise duty of Rs. 6,85,516.69/-) will not be leviable on them under the provisions of Rule 9(2) of the Central Excise and Salt Rules, 1944 read with section HAD of the Act. Against the said show-cause notice, the petitioner gave a reply on 2nd July, 1994.

6. Thereafter, the Commissioner passed an order on 27.12.1995 confirming the demand of Rs. 92,20,349.28/-. Against the said order of the Commissioner, the appellant filed an appeal on 16th of May, 1996. Thereupon, the appellate authority, by an order dated 5th of June, 1996, was pleased to set aside the order of the Commissioner and remanded the matter for de novo adjudication by the Commissioner.

7. Pursuant to the said order of remand, the Commissioner again passed an order on 28th February, 2002 ordering the payment of Central Excise Duty to the tune of Rs. 86,54,835.69/- under Rule 9(2) of the Central Excise and Salt Rules, 1944 read with the provision of Section 11A of the Central Excise and Salt Act, 1944 within 30 days from the date of receipt of the said order by the appellant. A penalty to the tune of Rs. 9/- lakhs was also imposed under Rule 173Q(1) of the said Rules. The Commissioner held that there is no case for passing any order of confiscation. Against the said order, an appeal was preferred by the appellant and the said appeal was decided by the Customs, Excise and Gold (Control) Appellate Tribunal, Eastern Bench, Kolkata on August 22, 2002. By the order under appeal, the Appellate Authority dismissed the appeal as also the appeal, which was filed by the revenue against the order of the Commissioner.

8. This order is sought to be challenged by the appellant by filing a suit in the City Civil Court at Calcutta and in connection with the said suit, the appellant also filed an injunction petition.

9. While dealing with the injunction petition, the learned Judge of the City Civil Court at Calcutta passed the impugned order refusing to grant any injunction and, inter alia, held that the Civil Court does not, however, have any jurisdiction in the matter.

10. In assailing the said finding, the learned Counsel for the appellant relied on the judgment of the Privy Council in the case of AIR 1940 105 (Privy Council) .

11. In *Mask & Co.*, the question, which was agitated, was whether the Civil Court had jurisdiction to entertain a suit praying for recovery of the amount allegedly collected in excess from the company by levying upon them a tariff and, in fact, the order passed by the Government of India on revision was also challenged. The learned Single Judge dismissed the respondents' suit on the ground of lack of jurisdiction, but then the High Court of Madras set aside the order of the subordinate Judge and from that, appeal was taken to the Privy Council by the Secretary of State. The Privy Council allowed the appeal and reversed the judgment of the High Court and while doing so held that the jurisdiction of the Civil Court is impliedly barred.

12. In doing so, the learned Judges of the Privy Council considered the provisions, which were made in the Sea Customs Act, to deal with the grievances of *Mask & Co.* and held as follows :

"By Sections 188 and 191 a precise and self-contained Code of appeal is provided in regard to obligations which are created by the statute itself, and it enables the appeal to be carried to the supreme head of the executive Government. It is difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the Civil Courts".

13. In view of the aforesaid ratio in *Mask & Co.*, and having regard to the provisions contained under the Central and Salt Excise Act, 1944 in which detailed machinery has been provided for redressal of the grievances of the appellant, this Court finds that there is no error in the order passed by the learned City Civil Court Judge. In fact, the learned Judge of the City Civil Court considered the relevant provisions of Section 35H of the Act, which provides a remedy right up to the High Court. It also can not be disputed that from the order of the High Court, an appeal was also provided right up to the Supreme Court. In view of those detailed provisions under the said Act, in my judgment, the jurisdiction of the Civil Court is impliedly barred. So, the decision in case of *Mask & Co.* does not support the case of the appellant.

14. The learned Counsel also relied on some other decisions, which are discussed below. The learned Counsel relied on the decision of the Supreme Court in the case of [Lala Ram Swarup and Others Vs. Shikar Chand and Another](#), . Reliance was placed on paragraph 19 of the judgment in the case of *Ram Swarup*. In the case, question in issue was whether the landlord could bring a suit, for ejecting his tenant, without the permission of the District Magistrate? It is clear from the scheme of the Act in question, namely U. P. (Temporary) Control of Rent and Eviction Act, 1947, that the District Magistrate may grant or refuse to grant the permission to a landlord to file such suit. After the District Magistrate passes an order on the landlord's application, the party aggrieved, may apply for revision to the Commissioner within 30 days and the Commissioner has a jurisdiction to deal with the revision application. If the

Commissioner is satisfied that the District Magistrate has acted illegally or with material irregularity, the Commissioner can make an appropriate order and the order, thus, made by him, is final subject to the order of the State Government. Construing these provisions, it was argued that the jurisdiction of the Civil Court was clearly barred. In that context, the Court came to the conclusion that the bar created under the relevant provision by excluding the jurisdiction of the Civil Court, cannot operate in cases, where the plea goes to the root of the matter and where it would show that in view of the pleas taken the order is a nullity. The statutory provision in the U. P. Act and the Central Excise and Salt Act are not at all identical." In the U. P. Act, a suit could be filed with the permission of the District Magistrate, so there is no bar on the Civil Court's jurisdiction. Now, if the permission is refused on a ground, which ultimately turns out to be a nullity, a suit will always lie.

15. But, the statutory provisions, in the instant case, are totally different and they are different for a definite purpose. The statutory provisions of the Central Excise Act deal with the question of revenue and, as such, detailed provisions have been created for appeal and then the remedy can be pursued up to High Court and also Supreme Court in order to shorten the period of litigation and for a quick decision. Thus, the dilatory and time consuming proceeding of a suit before a Civil Court has been impliedly barred. Any reasonable construction of the provision of the Central Excise Act would lead to that conclusion. Therefore, the ratio in Ram Swarup has no application.

16. Reliance was also placed on the Constitution Bench judgment of the Supreme Court in the case of [Mafatlal Industries Ltd. and Others Vs. Union of India \(UOI\) and Others](#), . In Mafatlal, the question, which was considered by the Constitution Bench, was claims for refund and the majority judgment held that refund claim can only be pursued under the provision of Central Excise and Salt Act, 1944, viz. u/s 11B of the said Act and Section 27 of the Customs Act. The Court held that even the relief under Article 226 is also barred (see paragraph 108 of the judgment). Insofar as dealing with the provision of Section 9 of the said Code is concerned, Justice Jeevan Roddy, while delivering the majority judgment, held that where there is a complete mechanism for redressal in the concerned statute, there is a bar to Civil Court's jurisdiction by implication. The learned Judge was pleased to observe as follows :

"Because the Act creates new rights and liabilities and also provides the machinery for assessment and adjudication of those rights and liabilities, a bar to the jurisdiction to Civil Court arises by necessary implication". [Para 23 p 577 of the Report.

17. In the majority judgment, delivered by Justice B. P. Jeevan Reddy on His Lordship's behalf and on behalf of other four learned Judges, it was clearly stated in paragraph 108 (x) at pages 634-635 of the report that no suit is maintainable for refund of duty. The exact observations made are set out below :

"(x) By virtue of sub-section (3) of Section 11B of the Central Excise and Salt Act, as amended by the aforesaid Amendment Act, and by virtue of the provisions contained in sub-section (3) of Section 27 of the Customs Act, 1962, as amended by the said Amendment Act, all claims for refund (excepting those which arise as a result of declaration of unconstitutionality of a provision whereunder the levy was created) have to be preferred and adjudicated only under the provisions of the respective enactments. No suit for refund of duty is maintainable in that behalf.

18. In view of the said majority judgment, which is binding on this Court, any contrary opinion expressed in the judgment, does not have the character of a binding precedent.

19. The learned Counsel for the appellant relied on certain observations on jurisdiction made by the Hon"ble Justice Paripoornan, a learned Member of the Bench. Even though Justice Paripoornan concurred with the majority, but, on the question of jurisdiction, His Lordship was pleased to express a slightly different view. But, the majority judgment, which is binding on us, clearly states that no suit is maintainable;

20. The learned Counsel also relied on a recent judgment of the Supreme Court in the case of [ITW Signode India Ltd. Vs. Collector of Central Excise](#), . The learned Counsel relied on paragraph 69 of the said judgment in order to contend that the question of limitation involves the question of jurisdiction and any finding of fact on a question of jurisdiction is a jurisdictional fact and as such, a jurisdictional question is to be determined having regard to both fact and law and the learned Judges of the Supreme Court held that the CEGAT committed a manifest error in not determining the said question.

21. Accepting those principles as stated in the Supreme Court judgment, this Court does not find how the said judgment has any relevance to the points with which this Court is concerned in the facts of the present case. In the paragraph under reply, the Supreme Court was examining the question, while exercising power under the provisions of the Central Excise and Salt Act. The Supreme Court was not exercising power under any other provisions. In fact, it is clear that the Supreme Court was exercising its power under the Act and was examining the correctness of the judgment and order dated 06.04.95 passed by CEGAT, New Delhi. Therefore, the Supreme Court was not exercising the power as a Civil Court. The said decision is a clear authority for the proposition that the statutory provision under the said Act provides adequate remedy to an aggrieved person, like the appellant, right up to the Supreme Court and, therefore, the jurisdiction under the Civil Court is impliedly barred.

22. In other words, the ratio of ITW Signode is contrary to the contentions raised by the learned Counsel for the appellant.

23. In view of the aforesaid, this Court does not find any reason to admit this appeal. The judgment and order passed by the learned Judge of the First Court is affirmed. The appeal is, therefore, summarily dismissed.

24. No order as to costs.

25. Xerox certified copy of the judgment delivered today, be supplied to the learned advocates for the parties expeditiously, if applied.

Tapan Kumar Dutt, J.

26. I agree.