

Orient Paper Mills Ltd.

Vs

Union of India

Civil Appeal Nos. 976-996 of 1966

(K. S. Hegde, A. N. Grover, J. C. Shah JJ)

10.03.1970

JUDGMENT

GROVER, J. -

1. All these appeals by special leave against the orders made by the Central Government under Section 36 of the Central Excises and Salt Act, 1944, hereinafter called the "Act", involve common questions and shall stand disposed of by this judgment.

2. The facts and circumstances relating to C.A. 976 of 1966, may along be stated. The appellant carries on business, inter alia, of manufacturing and selling various kinds of paper and boards at its factory at Brajrajnagar in the district of Sambalpur in the State of Orissa. It manufactures various types and qualities of paper. It is stated that there are three types of paper which are principally manufactured. These are creamwove paper, map litho paper and writing paper, In the appeal the facts of which are under consideration we are concerned with creamwove paper on which excise duty was levied. From the year 1960 till July, 1961, creamwove paper was being assessed as printing and writing paper under Item 17(3) of the First Schedule to the Act, the rate being 35 nP. per kg. Sometimes in July, 1961, the Central Excise authorities required the appellant to send samples of the said paper to the Chemical Examiner of the Central Excise authorities for the purpose of chemical test. The appellant received a letter, dated August 10, 1961, from the Superintendent, Central Excise. In a footnote it was stated that this paper of gram weight 116 and above per sq. metre was to be assessed under Item 17(10) in view of the Chemical Examiner's Report. It is not disputed that the rate under that item would be the same as under Item 17(1). The Collector of Customs issued instructions to the Deputy Superintendent whose duty it was to make assessment of the appellant directing him to assess creamwove paper of a certain weight under Item 17(1) of the tariff at the rate of 50 nP. per kg. with effect from September 5, 1961. By means of a letter, dated September 7, 1961, the Deputy Superintendent informed the appellant that in accordance with the decision of the Competent authority creamwove paper of the weights mentioned in the letter would be assessable as cartridge paper under Item 17(1) of the tariff in the Schedule. It was further stated that :

"I have also been directed to serve demands for short levy of excise duty on past clearances of creamwove paper, where due."

The Deputy Superintendent addressed another letter, dated September 13, 1961, to the same effect. It was added therein that map litho paper weighing 85 grams per sq. metre and above was also to be taken as cartridge paper for the purpose of assessment under Item 17(1) as per the decision of the competent authority. On September 19, 1961, the appellant made an inquiry from the Deputy

Superintendent as to the basis on which classification in the matter of assessment of duty had been made. The Deputy Superintendent sent the following reply on September 20, 1961 :

"..... I am to inform you that the classification as intimated to you in respect of the abovementioned varieties of paper are as per decision of the competent authority."

It was further admitted in the letter of the assistant Collector, Cuttack, to the collector, Central Excise, dated April 7, 1962, that the classification of the paper in question was made under Item 17(1) of the tariff as cartridge paper in accordance with instructions contained in the Collector's letter of September 5, 1961. The Deputy Superintendent had made the assessment accordingly. As regards the copy of the Chemical Examiner's Report it was stated that the matter had been referred to the higher authorities.

3. The Deputy Superintendent, Central Excise, had collected the excise duty on creamwove paper in accordance with Item 17(1) of the tariff for the months of June and July, 1962. The appellant lodged a claim with the Assistant Collector of Central Excise for refund of Rs. 38,809.81 being the sum assessed in excess. The Assistant Collector rejected the claim on the ground that no overcharge had been made. The appellant then appealed under Section 35 of the Act to the Collector of Central Excise and Customs which was rejected by him. The Central Government was thereafter approached under Section 36 on the revisional side. The revision petition was dismissed by an order made in the following terms :

"The Government of India have carefully considered all the points made by the applicants, but they regret that they do not find any justification for interfering with the Order in Appeal, which is correct in law and based on facts. The revision petition is accordingly rejected."

4. Now it is common ground, it being admitted in the statement of case filed on behalf of the respondent that the paper was assessed to duty in accordance with the instructions from the Collector. The main question is whether an assessment made by a subordinate officer in accordance with the instructions issued by the collector to whom an appeal lay against the order of that subordinate officer can be called a valid assessment in the eye of law. As has been pointed out in *Orient Paper Mills Ltd. v. Union of India*, ((1969) 1 SCR 245 : (AIR 1969 SC 48)) in which the parties were the same as before us now no authority, however high, can control the decision of a judicial or a quasi-judicial authority that being the essence of our judicial system. In the present case, when the assessment is to be made by the Deputy Superintendent or the Assistant Collector, the Collector, to whom an appeal lies against his order of assessment, cannot control or fetter his judgment in the matter of assessment. If the Collector issues directions by which the Deputy Superintendent or the Assistant Collector is bound, no room is left for the exercise of his own independent judgment.

5. According to the learned Attorney-General the assessment proceedings are not of a quasi-judicial nature nor is the assessing authority a quasi-judicial authority. We are unable to agree. It is apparent from the judgment referred to above and numerous other decisions of this Court delivered in respect of various taxation laws that the assessing authorities exercise quasi-judicial functions and they have duty cast on them to act in a judicial and independent manner. If their judgment is controlled by the directions given by the Collector it cannot be said to be their independent judgment in any sense of the word. An appeal then to the Collector becomes an empty formality. In the previous decision of this Court mentioned above the appeal and the revision had been rejected by the Collector and the

Central Government on the ground that a direction had been issued by the Central Board of Revenue to the effect that the paper in question be treated as belonging to a particular classification. This Court entertained no doubt that the direction given by the Board was invalid and it vitiated the proceedings before the Collector as well as the Government. Similarly in the present appeal the Deputy Superintendent or the Assistant Collector were vitiated. This position obtains in all the appeals although the type and quality of paper are different. The Central Government merely affirmed the order made by the Collector in each case and did not give any independent reasons for upholding the levy of duty made in accordance with the directions of the Collector.

6. It is unnecessary to deal with other points raised on behalf of the appellant because, in our opinion, these appeals must succeed on the ground that the impugned orders were vitiated for the reasons given and deserve to be set aside. We accordingly quash these orders. The assessing authorities, namely, the Deputy Superintendent or the Assistant Collector shall make fresh assessment of duty in accordance with law and thereafter the question of refund will be decided by the appropriate authorities. Appeals are thus allowed with costs. One hearing fee.

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