Gokak Patel Volkart Limited

Vs

Collector of Central Excise, Belgaum

Civil Appeal No. 161 of 1986

(CJI R. S. Pathak, Ranganath Misra JJ)

17.02.1987

JUDGMENT

RANGANATH MISRA, J. -

1. The fate of this appeal under Section 35(L) of the Central Excises and Salt Act, 1944, depends upon the meaning and scope of the Explanation appearing in Section 11-A of the Act.

2. The High Court of Karnataka by its order dated June 4, 1976 in Writ Petition No. 2632 of 1976 gave the following direction :

> Pending disposal of the aforesaid writ petition, it is ordered by this Court that collection of excise duty as a fabric be and the same is hereby stayed. It is further ordered that the petitioner shall however continue to pay excise duty as yarn and shall further maintain an account in square meters for future clearance.

The said writ petition was ultimately dismissed by the High Court on February 16, 1981. The operative part of the court's final order ran thus :

> For the reasons aforesaid, we make the following order :
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> (i) Rule discharged;
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> (ii) We decline to interfere at this stage leaving open to the petitioners to urge all the contentions in reply to the show cause notices.
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> (3) On May 20, 1982, a notice to show cause was issued to the appellant by the Assistant Collector, being Notice No. 913, and with this the Collector sought to raise a demand for the period from June 20, 1976 to February 28, 1981 apart from for the period between April 1, 1975 to August 18, 1975 in respect of which an earlier show cause notice dated January 29, 1976 had already been issued.

4. It is not disputed by the revenue that the appropriate period of limitation to apply to the facts of the case is six months as provided in Section 11-A of the Act and that the notice issued on May 20, 1982 was beyond that period. Reliance was placed on the Explanation for obtaining extension of that period. The Explanation reads thus :

> Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years,

as the case may be.

The provision in the Explanation incorporates a well known principle of law. Section 15 of the Limitation Act of 1908 (also of Section 15 of the Limitation Act of 1963) incorporates the same principle. This Court in Sirajul Haq Khan v. Sunni Central Board of Waqf, ((1959 SCR 1287 : AIR 1959 SC 198) dealt with the effect of an order of injunction in the matter of computation of limitation. At page 1302 of the Reports, Gajendragadkar, J. as he then was, spoke for the court thus :

> It is plain that, for excluding the time under this section, it must be shown that the institution of the suit in question had been stayed by an injunction or order; in other words, the section requires an order or an injunction which stays the institution of the suit. And so in cases falling under Section 15, the party instituting the suit would by such institution be in contempt of court ..... But, in our opinion, there would be no justification for extending the application of Section 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation.

In the instant case, the order of stay passed by the Karnataka High Court had only stayed the collection of the excise duty, which is a stage following levy under the scheme of the Act. Obviously there was no interim direction of the High Court in the matter of issue of notice for the purpose of levy of duty. The relevant portion of Section 11-A provided :

> (1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :
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> #* * *##
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> (2) The Assistant Collector of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

Reference to Section 3 of the Act which contains the charging provision clearly shows that levy and collection are two distinct and separate steps. This Court in N. B. Sanjana, Asstt. Collector of Central Excise v. Elphinstone Spinning & Weaving Mills Co. Ltd. ((1971) 3 SCR 506, 514 : (1971) 1 SCC 337 : AIR 1971 SC 2039), at page 514 stated : (SCC p. 344, para 14)

The charging provision Section 3(i) specifically says "There shall be levied and collected in such a manner as may be prescribed the duty of excise ....". It is to be noted that sub-section (i) uses both the expressions "levied and collected" and that clearly shows that the expression "levy" has not been used in the Act or the Rules as meaning actual collection.

5. The High Court having directed stay of collection had, therefore, not given any interim direction in the matter of issue of notice or levy of the duty. The Explanation in clear terms refers to stay of service of notice. The order of the High Court did not at all refers to stay of service of notice.

Therefore, there is force in the submission of the appellant that the benefit of the Explanation is not available in the facts of the case.

6. No notice seems to have been issued in this case in regard to the period in question. Instead thereof an outright demand had been served. The provisions of Section 11-A(1) and (2) make it clear that the statutory scheme is that in the situations covered by the sub-section (1), a notice of show cause has to be issued and sub-section (2) requires that the cause shown by way of representation has to be considered by the prescribed authority and then only the amount has to be determined. The scheme is in consonance with the rules of natural justice. An opportunity to be heard is intended to be afforded to the person who is likely to be prejudiced when the order is made, before making the order thereof. Notice is thus a condition precedent to a demand under sub-section (2). In the instant case, compliance with this statutory requirement has not been made, and, therefore, the demand is in contravention of the statutory provision. Certain other authorities have been cited at the hearing by counsel for both sides. Reference to them, we consider, is not necessary.

7. The appeal has to be allowed and the demand raised for the period August 19, 1975 to February 23, 1981 has to be set aside. There shall be no order for costs. The tax paid, if any, shall be refunded to the appellant.

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