

SUREME COURT OF INDIA

Itc Ltd.

Vs.

Union of India (Uoi)

(S.Ranganathan, P Sawant and N.M. Kasliwal JJ.)

22.08.1990

ORDER

1. After hearing learned counsel for the petitioners as well as counsel who took notice on behalf of the Union of India, we are of the opinion that there are no grounds to interfere with the order passed by the High Court except to a limited extent which we will indicate later.

2. The High Court has dismissed the writ petition filed by the petitioner on the ground that there is an adequate alternative remedy by way of an appeal under Section 35 of the Central Excise Act. Learned counsel for the petitioner submits that the petitioner will face certain difficulties in pursuing this remedy:

(1) This remedy may not be any longer available to it because the appeal has to be filed within a period of three months from the date of the assessment order and delay can be condoned only to the extent of three more months by the Collector under Section 35 of the Act. It is pointed out that the petitioner did not file an appeal because the Collector (Appeal) at Madras had taken a view in a similar matter that an appeal was not maintainable. That apart, the petitioner in view of the huge demand involved filed a writ petition and so did not file an appeal. In the circumstances of the case, we are of the opinion that the ends of justice will be met if we permit the petitioner to file a belated appeal within one month from today with an application for condonation of delay, whereon the appeal may be entertained. Learned counsel for the Revenue has stated before us that the Revenue will not object to the entertainment of the appeal on the ground that it is barred by time. In view of this direction and concession, the petitioner will have an effective alternative remedy by way of an appeal.

(2) Learned counsel submits that the High Court has made certain observations which may be treated as a finding that the assessment order which is challenged was passed after complying with the principles of natural justice. In this context, counsel points out that the assessment order travels beyond the region covered by the discussions which culminated in the order of the Director General dated 10-4-1986. There are certain aspects regarding post-manufacturing expenses (PME) as well as the question whether the addition should be made to the price or to the value which has arisen subsequently and on these aspects the petitioner has had no opportunity of putting forward its case at all. In this context, it may be pointed out that the impugned order of assessment is consequential

to an order dated 10-4-1986. In the proceedings before us, the petitioner has not challenged the correctness of the order dated 10-4-1986. The issue in controversy is whether the impugned order correctly implements the direction given in the order dated 10-4-1986. We would therefore make it clear that all the points which the petitioner could have urged against the assessment order had he filed an appeal instead of a writ petition should now be open to him. The Collector (Appeals) will be at liberty to go into all questions so raised and he may do this uninfluenced by the observations made by the High Court on the questions as to whether the assessment proceedings had reached a finality even earlier and as to whether the requirements of natural justice have been complied with in passing the impugned order. We say this because we think that the High Court, having decided to dismiss the writ petition on the ground of alternative remedy, could not have intended to conclude these points and so these observations were only tentative in nature, not intended to preclude the petitioner from raising all the points open to him in the appeal.

(3) The third difficulty pointed out by the petitioner is in regard to stay of the demand raised by the impugned order. We do not pass any order in this regard, It will be open to the petitioner to make a stay application or an application for waiver of deposit of the duty demanded as a precondition for appeal before the Collector'(Appeals). We direct that if such an application is filed, the Collector should deal with it and dispose of it in accordance with law.

3. The special leave petition is disposed of in the above terms.

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