

Union of India and Others

Vs

Kamlakshi Finance Corporation Ltd.

Special Leave Petition (Civil) No. 7717 of 1990

(S. Ranganathan, N. D. Ojha, V. Ramaswami-II JJ)

24.09.1991

JUDGMENT

RANGANATHAN, J. -

1. The respondent manufactures electrical insulation tapes. According to the respondent, the goods manufactured by it fall under tariff heading 85.47 of the schedule to the Central Excise Tariff Act, 1985. On the other hand, according to the petitioner, the goods fall under heading 39.19 of the same schedule. The Assistant Collector of Central Excise, therefore, gave notice to the respondent to show cause why the product should not be classified under heading 39.19. The assessee, in reply, pointed out that, in respect of its factory at Borivili, its claim that the goods were classifiable under heading 85.46 and that heading 39.19 had no application had been accepted by the Collector of Central Excise (Appeals). The Assistant Collector, however, did not accept the assessee's contention. He distinguished the order in respect of the Borivili plant on the ground that, there, the assessee's claim was for classification under heading 85.46 and not 85.47. He held, by his order dated January 4, 1988, that the products in question fell under heading 39.19.
2. The assessee preferred an appeal to the Collector (Appeals), who set aside the order of the Assistant Collector. He observed that reason given by the Assistant Collector for not following the order of the Collector of Central Excise (Appeals) on which the assessee had placed reliance before him was totally untenable. He set aside the order appealed against and directed the Assistant Collector to pass a reasoned and speaking order.
3. When the matter thus went back to the Assistant Collector he passed an order on May 12, 1989, reiterating the conclusion that had been reached by his predecessor. He also did not give any reasons as to why the order of the Collector (Appeals) in respect of the Borivili plant was not followed. Not only this, the assessee had placed before him a decision of the Central Excise and Gold Control Appellate Tribunal ('the Tribunal') in the case of Chetna Polycoats (P) Ltd. [Chetna Polycoats (P) Ltd. v. Collector of Central Excise, (1988) 37 ELT 253 : (1988) 17 ECC 225 (T)], to a similar effect. The Assistant Collector distinguished it observing that the said decision had not been agreed to by the department which had filed an appeal to the Supreme Court therefrom. The second order passed by the Assistant Collector was practically a repetition of the earlier order.
4. The assessee thereupon filed a writ petition in the Bombay High Court. The High Court quashed the order of the Assistant Collector and directed the department to allocate the matter to a competent officer to pass a proper order. The Union of India has preferred this appeal. The learned Additional

Solicitor-General, appearing for the Union, fairly concedes that so far as the merits are concerned, the department can have no grievance, since the High Court has only set aside the order of the Assistant Collector and remanded the matter back for a proper consideration and a proper order. We are, therefore, not called upon to enter into the merits of the classification in the present case except to observe that the decision of the Tribunal in the case of Chetna Polycoats (P) Ltd. [Chetna Polycoats (P) Ltd. v. Collector of Central Excise, (1988) 37 ELT 253 : (1988) 17 ECC 225 (T)] was the subject matter of Civil Appeal No. 2321 of 1989 preferred by the department which was dismissed at the stage of admission by this Court on February 13, 1991.

5. The learned Additional Solicitor-General, however, submits that the learned Judges have erred in passing severe strictures against the two Assistant Collectors who had dealt with the matter. He submitted that these officers had given reasons for classifying the goods under heading 39.19 and not 85.46 and could do no more. He submitted that they acted bona fide in the interests of Revenue in not accepting a claim which, they felt, was not tenable.

6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35-E confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Direct Taxes comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to

have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under Section 35-E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue, will get the duty, though after some delay which such procedure would entail.

8. We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor-General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assessee-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them.

9. With the above observations, this special leave petition is dismissed.

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