

Sangfroid Remedies Ltd.

Vs

Union of India and Others

Civil Appeal No. 4744 of 1998

(K. Venkataswami, A. P. Mishra JJ)

11.09.1998

ORDER

1. Leave granted.

2. This appeal is preferred against the order dated 24-11-1997 of the Andhra Pradesh High Court in Writ Petition No. 31031 of 1997. Having regard to the nature of the controversy, it is not advisable to go into the merits of the case at this stage. The grievance of the appellant is that the 3rd respondent before passing the impugned order rejecting the claim of the appellant that the product "Shower to Shower" prickly heat powder falls under Chapter Heading 33.03 and holding that the same falls under Chapter Heading 33.04 and levying excise duty of Rs. 5.18 crores, has not given any opportunity to substantiate its claim and no notice was served on them by the third respondent before passing the impugned order. Therefore, according to the appellant, the order passed was an ex parte one. When an appeal was preferred before the 2nd respondent with a prayer to dispense with the pre-deposit as laid down under Section 35-F of the Central Excise Act, the appellant was directed by order dated 7-11-1997 to pay the full excise duty amount of Rs. 5,17,76,163 for entertaining and bearing the appeal.

3. Aggrieved by the order of the 2nd respondent, the appellant moved the High Court under Article 226 of the Constitution and the High Court, while reducing the amount to be paid for hearing the appeal, directed the appellant by the order under appeal to pay Rs. 1.25 crores and give bank guarantee for another sum of Rs. 2 crores.

4. In these circumstances, the appellant has filed this appeal by way of special leave petition.

5. We have heard learned Senior Counsel, Mr H. N. Salve, for the appellant and also the learned Senior Counsel for the respondents.

6. In view of the objection/contention raised throughout by the appellant that no notice was served on them and opportunity given before passing the impugned assessment order by the 3rd respondent, which fact has not been disputed before us, we consider that insisting upon the payment of the duty determined, cannot be upheld. Further, there is one other factor in this case and that is that the appellant has since been declared as a sick industry by an order dated 23-4-1998 by the Board for Industrial and Financial Reconstruction.

7. In these circumstances, we are of the view that directing the appellant to pay the excise duty as determined as a condition for hearing the appeal, is not sustainable. Accordingly, on the facts of the case, the orders of the High Court and that of the appellate authority and the 3rd respondent are set

aside.

8. Both the learned counsel are agreed that the matter can go back to the Assistant Commissioner of Central Excise, Hyderabad II Division for hearing the case on merits. Accordingly, we remit the matter to the Assistant Commissioner of Central Excise, Hyderabad II Division for bearing the matter on merits. The appeal is allowed. No costs.