Union of India & Another

v.

M/s. Guwahati Carbon Ltd

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE ANIL R. DAVE

C. A. Nos. 2569-2570 of 2012 (Arising out of SLP(C) Nos. 33542-33543 of 2010) | 28-02-2012

1. Delay condoned.

2. Leave granted.

3. These appeals are directed against the judgment and order passed by the Division Bench of the High Court of Calcutta in A.P. O.T. No. 447 of 2009 with W.P. No. 483 of 2009, dated February 3, 2010 See Guwahati Carbon Ltd. v. Union of India, (2013) 19 GSTR 502 (Cal).

4. By the impugned judgment and order, the Division Bench has set aside the orders passed by the learned single judge in Writ Petition No. 483 of 2009 and has remanded the matter for fresh disposal on merits in accordance with law by the learned single judge.

5. Admittedly, the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata ("the Tribunal" for short), had passed the order, inter alia, holding that the Respondent herein are not entitled to include freight and insurance charges in the assessable value, and therefore, the duty levied under the Central Excise Act, 1944 ("the Act" for short) requires to be recalculated. Aggrieved by the said order, the Respondent herein had filed a writ petition under articles 226 and 227 of the Constitution of India. Though the learned single judge had admitted the petition on the first date of hearing, subsequently thought it fit to dispose of the writ petition on the ground that the Respondent can avail of an alternative remedy as provided by the Act.

6. Aggrieved by the order so passed by the learned single judge, the assessee had carried the matter in appeal to the Division Bench of the Calcutta High Court. The Division Bench has allowed the appeal on the ground that a writ court, in exercise of its powers under article 226 of the Constitution of India, has vast powers to decide any question that may arise under the provisions of the Act.

7. We reiterate that the High Court, under article 226 of the Constitution of India, has vast powers as this Court has under article 32 of the Constitution of India, but such powers can only be exercised in those cases where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in Defence of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice.

8. In the instant case, the adjudicating authority has passed an order holding that the Respondent herein had inflated the assessable value of their product by mis-declaring the actual place of removal and further included the element of transportation cost to the assessable value of the goods cleared for delivery from the place of removal, i.e., factory premises to the buyers' premises. The order passed by the adjudicating authority was reversed by the Commissioner of Appeals in appeal filed by the Assessee/Respondent. The order so passed was carried in appeal by the Revenue before the Tribunal. In this appeal, the Tribunal has passed an order in favour of the Revenue and against the Assessee/respondent.

9. The Assessee/respondent, for the reasons best known, had filed a writ petition under articles 226 and 227 of the Constitution of India. As we have earlier noticed, though the learned single judge thought it fit to examine the issues raised in the writ petition and on subsequent date, on the date fixed for final disposal, thought it fit to direct the Assessee to avail of the alternate remedy provided under the statute itself. The orders so passed was called in question by the Assessee/respondent before the Division Bench of the High Court. The Division Bench has taken the view that in a petition filed under article 226 of the Constitution of India, the High Court has vast powers to modify, vary or annul an order passed by the statutory Tribunal under the provisions of the Act, and accordingly, has allowed the writ appeal, remanding the matter back to the learned single judge with a direction to restore the writ petition to its file and decide the same on merits.

10. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in the case of Munshi Ram v. Municipal Committee, Chheharta reported in, AIR 1979 SC 1250 (See (1979) 118 ITR 488 (SC)). In the said decision, this Court was pleased to observe that when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner and all the other forums and modes of seeking remedy are excluded.

11. A Bench of three learned judges of this Court, in Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 (See (1983) 53 STC 315, 321 (SC)), held:

"11...The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act

and not by a petition under article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of ...."

12. In other words, existence of an adequate alternate remedy is a factor to 1; be considered by the writ court before exercising its writ jurisdiction (See Rashid Ahmed v. Municipal Board, Kairana, (1950) SCR 566.

13. In Whirlpool Corporation v. Registrar of Trade Marks, (1998) 8 SCC 1 this Court held:

"15. Under article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justices or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged...."

14. Keeping the above principles in view let us notice the fact situation.

15. Section 35G of the Central Excise Act, 1944 reads as under:

"35G. Appeal to High Court.--(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2).....

(3)....."

16. This provision deals with the appeals to the High Court. Under this provision, an appeal shall lie to the High Court from the order passed in an appeal by the Appellate Tribunal on or

after first day of July, 2003 if the order of the Tribunal does not relate, among other things, to the determination of any question having relation to rate of duty or to value of goods.

17. Having said so, we have gone through the orders passed by the Tribunal. The only determination made by the Tribunal is with regard to the assessable value of the commodity in question by excluding the freight/transportation charges and the insurance charges from the assessable value of the commodity in question. Since what was done by the Tribunal is the determination of the assessable value of the commodity in question for the purpose of the levy of duty under the Act, in our opinion, the Assessee ought to have carried the matter by way of an appeal before this Court under Section 35L of the Central Excise Act, 1944.

18. In our opinion, the Assessee ought not to have filed a writ petition before the High Court questioning the correctness or otherwise of the orders passed by the Tribunal. The excise law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under article 226 of the Constitution. Therefore, the learned single judge was justified in observing that since the Assessee has a remedy in the form of a right of appeal under the statute, that the remedy must be exhausted first. The order passed by the learned single judge, in our opinion, ought not to have been interfered with by the Division Bench of the High Court in the appeal filed by the Respondent/Assessee.

19. In view of the above, we cannot sustain the judgment and the order passed by the Division Bench of the High Court. Accordingly, we allow these appeals and set aside the impugned judgment.

20. We grant liberty to the Respondent/assessee, if it so desires, to file an appropriate appeal before this Court as provided under the statute within two months from today. We clarify that we have not expressed any opinion on the merits of the case.

21. With these observations and directions, the appeals are disposed of.