

Commissioner of Central Excise and anr. Vs. Indorama Textiles Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/354463

Court : Mumbai

Decided On : Apr-19-2006

Reported in : 2006(5)BomCR914; 2006(204)ELT222(Bom); 2006(4)MhLj366

Judge : D.D. Sinha and ;R.C. Chavan, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 35E and 35EE; [Constitution of India](#) - Articles 226 and 227

Appeal No. : W.P. No. 683 of 2006

Appellant : Commissioner of Central Excise and anr.

Respondent : indorama Textiles Ltd. and anr.

Advocate for Def. : M.G. Bhangde, Sr. Counsel for Respondent No. 1

Advocate for Pet/Ap. : A.B. Chaudhari, Assistant Solicitor General

Disposition : Petition dismissed

Judgement :

ORDER

D.D. Sinha, J.

1. Heard Shri A.B. Chaudhari, the learned Assistant Solicitor General for the petitioners, and Shri M.G. Bhangde, the learned Senior Counsel for respondent

No. 1.

2. The present writ petition is filed against the order dated 22-8-2005 passed by respondent No. 2. The Joint Secretary, Government of India, Ministry of Finance (Department of Revenue).

3. Shri M.G. Bhangde, the learned Counsel for respondent No. 1, raised a preliminary objection about the maintainability of the present writ petition on the ground that the order is passed by the Central Government and, therefore, the Central Government is bound by the said order and cannot challenge its own order by filing the writ petition. Similarly, the petitioners being the subordinate officers of the Central Government, are not legally entitled to challenge the order passed by the Central Government and, therefore, the writ petition itself is not maintainable and the same should be dismissed on this preliminary issue alone. In order to substantiate these contentions, reliance is placed on the decision of the Apex Court in the case of State of Orissa v. Union of India and Anr. reported in : 1994(5)SCALE219 , as well as the decision of this Court in the case of Hindustan Distilleries v. State of Maharashtra reported in 1999(1) Mh.L.J. 704.

4. Shri A.B. Chaudhari, the learned Assistant Solicitor General for the petitioners, on the other hand, contended that the writ petition is very much maintainable. It is submitted that the revisional authority exercised revisional power under Section 35E of the [Central Excise Act, 1944](#). It is further contended that the revisional authority is constituted under the provisions of Section 35E of the said Act by the Legislature and is empowered to deal with the disputes brought before it by the aggrieved persons. It is further contended that by virtue of the scheme of the provisions of the Act, the proceedings brought before the revisional authority indicates that the revisional authority acts under the relevant provisions of the Act and, therefore, the revisional authority is a Tribunal, which is vested with judicial powers of the State and is required to act judiciously. It is, therefore, contended that even if the order is passed by the Joint Secretary, Government of India, Ministry of Finance (Department of Revenue), the said Officer has acted as a Tribunal and hence the order impugned is amenable to the writ jurisdiction of this Court. In order to substantiate these contentions, reliance is placed on the

decisions of the Apex Court in the case of Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh, Additional Collector of Customs, Calcutta and Ors. reported in : 1964 CriLJ234 , as well as in the case of State of Orissa v. Union of India and Anr. reported in : 1994(5)SCALE219 .

5. We have considered the contentions canvassed by the respective counsel and perused the provisions of Section 35E of the [Central Excise Act, 1944](#) as well as the decisions relied on and cited by both the counsel. It is no doubt true that a simpliciter policy decision or any other decision taken by the Central Government in its executive/administrative capacity would be a decision binding on the Central Government as well as the authorities subordinate to the Central Government. However, so far as the powers exercised by the Joint Secretary, Government of India, Ministry of Finance (Department of Revenue), in view of the provisions of Section 35E of the said Act are concerned, the same cannot be treated to be administrative powers exercised by the Central Government. On the other hand, by very nature of the scheme of Section 35EE of the said Act, the powers, which are exercised by the revisional authority, have judicial complexions and are undoubtedly required to be exercised judiciously. Similarly, the revisional authority constituted under Section 35E of the Act is empowered to deal with the disputes brought before it by the aggrieved persons. Taking into consideration the scheme of the Act, the nature of proceedings initiated before the revisional authority in view of Section 35EE of the Act, the kind of enquiry required to be undertaken by the revisional authority, etc., all these factors undoubtedly indicate that the revisional authority acting under Section 35EE of the Act acts as a Tribunal and, therefore, the powers, which it exercises, are judicial powers and the Tribunal is required to act judiciously.

6. Since the revisional authority acts as a Tribunal and is required to act judiciously, any order passed by such authority inconsistent with the established principles of law is an order amenable to the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution.

7. So far as the decision of the Apex Court in the case of State of Orissa v. Union of India and Anr., cited supra, relied on by the learned Counsel for respondent No.

1 is concerned, in para 12 of its judgment, the Apex Court has observed thus:

In this connection, it is necessary to note that in the first place, the State Government is not merely an authority subordinate to the Central Government which would, undoubtedly, be bound by the revisional orders of the superior authority. It is also the owner of the mines and minerals in question. If it is directed to issue to a mining lease in favour of any party, it has locus standi to challenge that order under Article 226 of the [Constitution of India](#).

The above-referred observations of the Apex Court, in our view, has no positive bearing in view of the facts and circumstances as well as the issue involved in the present writ petition. We have already observed hereinabove that the order of the Central Government, which is administrative in nature, is undoubtedly binding on the State Government, which is the authority subordinate to the Central Government. However, in the instant case, the basis gamut of the issue is completely different and distinct and, therefore, these observations of the Apex Court, in our view, are of no help to respondent No. 1.

8. Similarly, so far as the decision of this Court in the case of Hindustan Distilleries v. State of Maharashtra, cited supra, relied upon by the learned Counsel for respondent No. 1, is concerned, this Court has observed in para 29 of its judgment as under:

What has happened in the present case is that after a conscious decision of the Government some subordinate officer felt that the decision was running counter to the declared policy of the Government and in view of such Government Policy, note was put up or submission was made to the concerned Minister by the Officer who was admittedly subordinate to the Secretary. On the basis of which the later decision of rejecting the license to the petitioner for manufacture of country liquor was taken. In fact, this decision is also taken by the concerned Minister and is a Government decision. In view of the earlier decision of the Government communicated to the petitioner in clear terms, inducing petitioner to act upon it and to materially alter his position, the State is challenging its own earlier decision, although it has not come to the Court, but has been brought before us as respondent. It is an established principle that the State, as a petitioner cannot

challenge the validity of its own order as it is governed by general principle of estoppel, and if it is debarred from doing so, as a petitioner, the same principle would apply preventing the State from attacking its own decision even if it has come to the Court as a respondent. There is no quarrel about the observations made by the Apex Court referred to hereinabove, since the Government itself is not entitled to challenge its policy decision. However, in the instant case, we have already observed hereinabove that the revisional authority, while exercising revisional powers, acts as a Tribunal and is required to pass an order judiciously. In that view of the matter, we are afraid that the above referred decision of this Court is also of no help to respondent No. 1.

9. For the reasons stated hereinabove, the preliminary objection raised by the learned Counsel for respondent No. 1 is misconceived and, therefore, the same stands rejected.

10. S.O. to 20-4-2006.