Collector of Central Excise Vs. Mysore Lamp Works Ltd.

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Court : Karnataka

Decided On : Nov-26-1992

Reported in : 1993(42)ECC38; 1993LC303(Karnataka); 1993(64)ELT193(Kar); ILR1992KAR3735

Judge : K.A. Swami, A.C.J. and;N.D.V. Bhat, J.

Acts : Central Duties of Excise (Retrospective Exemption) Act, 1986 - Sections 2; Constitution of India - Articles 226 and 227; Central Excise Tariff Act, 1985; Central Excise Rules, 1944 - Rule 8(1)

Appeal No. : Writ Appeal No. 1702 of 1992

Appellant : Collector of Central Excise

Respondent : Mysore Lamp Works Ltd.

Advocate for Def. : Shri G. Chander Kumar, Adv.

Advocate for Pet/Ap. : Shri Ashok Haranahalli, CGSC

Judgement :

K.A. Swami, Acting C.J.

1. As this appeal lies in a narrow compass, it is admitted and heard for final disposal.

2. This appeal is preferred against the order dated 10th December, 1990 passed in Writ Petition No. 15389/1988. The respondents in the writ petition are the appellants.

3. In the writ petition, the show-cause notice bearing No. C. No. V/Chap. 85/15/28/88 C1 dated 19-8-1988 issued by the Collector of Central Excise, Bangalore was challenged.

4. The learned Single Judge has quashed the show-cause notice on the ground that the period for which the duty is demanded on the cathodes, lead-in-wires and filaments falls within the period of exemption as per the Notification dated 2nd April, '86 bearing No. 217/86 read with Section 2 of the Central Duties of Excise (Retrospective Exemption) Act, 1986 (hereinafter referred to as 'the Act').

5. It is contended by Sri Haranahalli, learned standing counsel for the Central Government that the notification dated 2nd April, 1986 does not attract the provisions contained in Section 2 of the Act therefore, the order passed by the learned Single Judge is not tenable. It is also further submitted that the jurisdiction under Article 226 need not be exercised in a writ petition challenging the show-cause notice because it is open to the writ petitioner to put forth all his contentions as a reply to the show cause and the Collector of Central Excise can decide them and if aggrieved by the decision of the Collector of Central Excise the writ petitioner has a remedy by way of an appeal to the Central Excise, Customs and Gold Control Appellate Tribunal and thereafter he has a right to approach the Supreme Court. Therefore, it is submitted that the exercise of jurisdiction under Article 226 or 227 of the Constitution is not warranted in a case like this.

6. Therefore, the points that arise for our consideration are as follows :

1. Whether this is a case which warrants exercise of jurisdiction under Article 226 or 227 of the Constitution

2. Whether the Exemption Notification No. 217/86 dated 2-4-1986 produced as Annexure-B in the Writ Petition falls within the scope of Section 2 of the Act

7. Point No. 1 :- It is true that normally this Court does not exercise the jurisdiction under Article 226 or 227 of the Constitution in a case where the determination depends upon the questions of facts which are disputed and also the case in which there is right of appeal and further appeal to the parties aggrieved. But, in a case where only a question of law affecting or concerning the very authority to demand the duty is involved we do not see any justification to refuse to exercise the jurisdiction and drive the parties to the appeals and further appeals. Therefore, we are of the view that as the present case depends only upon the interpretation of Section 2 of the Act and reading of the notification with reference to Section 2 of the Act, the learned Single Judge is justified in exercising the jurisdiction under Article 226 or 227 of the Constitution. Accordingly, Point No. 1 is answered in the affirmative.

8. Point No. 2 :- In this case it is not in dispute that the cathodes, lead-in-wires and filaments are covered by Chapter 85 of the Central Excise Tariff Act. Annexure-A produced in the writ petition, the correctness of which is not in dispute, is a Classification List of excisable goods produced/manufactured or warehoused and other goods produced or manufactured and intending to be removed by the assessee. It contains classification List No. 3/85-86 effective from 1-3-1986. The Notification No. 217/1986 dated 2nd April, 1986 exempts the articles mentioned in Chapter 85 of the Central Excise Tariff Act. Cathodes, lead-in-wires and filaments are included at Items C, F & G in the classification list. Therefore, it is clear from the Notification No. 217/1986 dated 2nd April, 1986 that these goods are exempted from duty and also it is not in dispute that these goods are used as inputs for manufacture of the final products by the appellants.

9. Now the question for consideration is, whether the Notification bearing No. 217/1986 dated 2nd April, 1986 falls within the scope of Section 2 of the Act.

10. The contention of Sri Haranahalli, learned standing Counsel for the Central Government is that the notification dated 2-4-1986 cannot at all be considered to be the one issued for the purpose of maintaining the effective rates of duties of excise in respect of certain goods at the level obtaining prior to 28-2-1986 therefore, it does not fall within the scope of Section 2 of the Act.

11. The object of the Act is to provide for giving retrospective effect to certain notifications relating to exemption from duties of excise. The notification dated 2-4-1986 bearing No. 217/1986 relates to, and specifically provides for, exemption from duties of excise. The first portion of Section 2 of the Act specifically states that every notification issued by the Government of India in the Ministry of Finance (Department of Revenue) on or after the 3rd day of March, 1986 but, before the 8th day of August, 1986, in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 shall be deemed to have, and to have always had, effect on and from the 1st day of March, 1986. It had become necessary to enact the Act because of the fact that certain goods were exempted from the duty of excise and they continued to be exempted under the new Tariff Act also whereas new Tariff Act came into effect from 1-3-1986 but, the notification exempting the articles from excise duty came to be issued subsequent to 2nd March, 1986 onwards. Consequently, the period from 1-3-1986 and upto the date of issue of the notification was not covered by the exemption notification. The Finance Act of 1985 came into effect from 1-3-1986. Therefore, the notification exempting the articles from the excise duty was required to be issued with effect from 1-3-1986 but the same could not have been issued with retrospective effect. Hence, the Parliament passed the Act giving retrospective effect to the Notifications issued on and from 3-3-1986 but before 8-8-1986 exempting certain goods from excise duty, from 1-3-1986.

12. We also do not find any substance in the contention of the learned Standing Counsel for the Central Government that the notification does not purport to maintain the effective rates of duties of excise in respect of certain goods at the level obtaining prior to 28th day of February 1986 or 1st March 1986 because as already pointed out the articles in question which are covered by the Notification dated 2-4-1986 were also exempted from excise duty during the year ending on 1-3-1986. Consequently by continuing the very exemption the Notification dated 2-4-1986 maintained the effective rates of duties of excise in respect of certain goods at the level obtaining prior to 28-2-1986 or 1-3-1986. Therefore, we are of the view that the learned Single Judge is right in holding that the Notification bearing No. 217/1986 dated 2-4-1986 falls under Section 2 of the Act. Hence, Point No. 2 is answered in the affirmative.

12A. For the reasons stated above, the appeal fails and the same is dismissed.