Techno Pack Private Ltd. Vs. Union of India

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Court : Andhra Pradesh

Decided On : Aug-26-1991

Reported in : 1992(57)ELT534(AP)

Judge : S.C. Pratap, C.J. and ;P.L.N. Sarma, J.

Acts : Central Excise Act, 1944 - Sections 11A, 11B and 11C

Appeal No. : Writ Petition No. 10525 of 1991

Appellant : Techno Pack Private Ltd.

Respondent : Union of India

Advocate for Def. : I. Koti Reddy, S.C. for Central Govt.

Advocate for Pet/Ap. : J. Chelameswar, ;C. Vijaya Kumar and ;K. V. Simhudu, Advs.

Judgement :
ORDER

S.C. Pratap, C.J.

1. Hearing counsel on either side and considering all such facts and circumstances to which our attention was drawn and, in particular, carefully going through Division Bench Judgment dated 26th February, 1991 in the earlier Writ Petition No. 9382 of 1990 filed by the present writ petitioners, we see no merits in

this fresh writ petition.

2. The Superintendent of Central Excise, I.E. Range, Visakhapatnam issued show cause notice on 17th November, 1983 in exercise of his power under Section 11A of the Central Excises and Salt Act (hereinafter referred to as 'the Act'), calling upon the first petitioner to show cause why an amount of Rs. 33,87,138.13 should not be collected from it towards the basis excise duty and 5% of special excise duty on the basis excise duty for the period 23rd October, 1977 to 22nd October, 1982. Considering the reply to the said notice and after personal hearing, the Assistant Collector of Central Excise, Visakhapatnam Division-II, passed his order on 12th November, 1984 holding the first petitioner liable to pay the excise duty as aforesaid. No appeal was preferred against the said order. The said order thus became final and binding on the first petitioner.

3. In the meanwhile, however, Central Government issued Notification bearing No. 208/84-C.E., dated 16th October, 1984 in exercise of its power under Section 11C of the Act. Under this notification Central Excise authorities were directed not to demand payment of duty in respect of goods such as those constituting subject-matter of the aforesaid writ petition for the period 25th November, 1987 to 22nd October, 1982. Pursuant to the said Notification the petitioners requested the authorities not to enforce the order dated 12th November, 1984. The Assistant Collector of Excise replied that, since no appeal had been filed against the said order, it was not possible to stay its enforcement. The demand as per the said order was thereafter reiterated by order dated 29th May, 1989 against which an appeal was filed to the Collector of Central Excise. The said appeal was dismissed. Further appeal therefrom to the Tribunal also failed. Hence, the earlier writ petition by the present writ petitioners.

4. In the said earlier writ petition the contention raised before the 'Division Bench' on behalf of the petitioners was to the effect that the Notification issued by the Central Government in exercise of its power under Section 11C of the Act could not be ignored by excise authorities and the petitioners were entitled to the benefit thereof. 'The Division Bench' hearing the said writ petition held that they were not concerned either with Section 11A or Section 11B of the Act, but were concerned

with Section 11C of the Act. It was further held that though the petitioners had not preferred any appeal against the order dated 12th November, 1984 of the Assistant Collector of Excise confirming the demand, that does not permit the excise authorities to recover the amount which the Central Government by its aforesaid Notification had exempted from recovery. The question was not finality of the order of the Assistant Collector of Excise but the execution of the said order consistent with the aforesaid Notification. The aforesaid Notification of the Central Government if given effect to, there was no doubt that the petitioners were entitled to the benefit of exemption from payment of excise duty for the period 25th November, 1978 to 22nd October, 1982. The total period covered by the final order dated 12th November, 1984 of the Assistant Collector of Excise was from 23rd November, 1977 to 22nd October, 1982. The aforesaid Notification covered substantial part of the said period viz., 25th November, 1978 to 22nd October, 1982. Thus giving to the petitioners the benefit of the aforesaid Notification, the Division Bench held that it was open to the respondents to issue revised demand in respect of the duty payable for the goods in question for the period 23rd October, 1977 to 24th November, 1978, (period admittedly covered by the aforesaid Notification).

5. Now, pursuant to the aforesaid Division Bench Judgment and deducting the entire period covered by the aforesaid Notification, the excise authorities demanded from the petitioners balance amount of Rs. 6,57,514.39, (out of the total original demand of Rs. 33,87,138.13), for the period 23rd October, 1977 to 24th November, 1978 which was admittedly a period not covered by the aforesaid Notification. It is this demand that is challenged in the present petition.

6. We see no merits in the said challenge. The said demand was already a part of the original demand earlier made against the petitioners. It was a demand covered by the earlier show cause notice and the reply thereto by the petitioners and in respect of which a personal hearing had also been given. It was a demand covered by the order dated 12th November, 1984 of the Assistant Collector of Excise which, as indicated, had become final. Again, it was a demand admittedly not covered by the aforesaid notification. In short, what is now being demanded from the petitioners is only small balance out of the original larger demand. There

is no dispute that the amount collected is as per the date and material supplied by the petitioners themselves for the said period. There is also no dispute about the rate of duty charges. We, therefore, see no justification why the said demand should be stayed. In fact, it was the amount which the petitioners were liable to pay all throughout and even during the pendency of the earlier writ petition. Decision of the writ petition does not exempt the petitioners from payment thereof. There being no dispute on these basic essentials and the demand being on the basis of the materials which the petitioners themselves have produced, and the levy being as per the admitted rate of duty, we see no justification for the petitioners not paying the said amount.

7. Attempt of the petitioners to, once again, challenge the legality an validity of the demand cannot be encouraged. All contentions raised against the original demand, which included the present demand, must be held to have been considered and adjudicated upon. Contentions not raised must be considered barred by constructive res judicata. It is not open to a litigant to file one writ petition after another raising piece-meal contentions every time. To us, it is obvious that the whole exercise has been invoked by the writ petitioners only to delay payment of the amount liable to be paid.

8. The petition thus fails and the same is dismissed.