

General Traders Vs. Customs Excise and Gold Control Appellate Tribunal and ors.

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Court : Allahabad

Decided On : Sep-09-1985

Reported in : 1985(22)ELT694(All)

Judge : A. Banerji and ;V.K. Khanna, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 23(1), 24, 35C, 35G and 35G(1);
[Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ No. 864 of 1984

Appellant : General Traders

Respondent : Customs Excise and Gold Control Appellate Tribunal and ors.

Advocate for Def. : R.S. Dhawan, Standing Counsel

Advocate for Pet/Ap. : J.C. Bhardwaj, Adv.

Disposition : Petition dismissed

Judgement :

A. Banerji, J.

1. This writ petition is directed against an order dated 27th June, 1984 passed by the Custom Excise and Gold Control Appellate Tribunal, New Delhi (for short Tribunal). The Assistant Collector, Central Excise, Agra held that the petitioner was not eligible for exemption and concessional rate of duty in terms of Notification No. 8/80-C.E., dated 18th June, 1980 as amended by Notification No. 50/81, dated 1st March, 1981. The appeal was rejected by the Collector. In the appeal before the Tribunal, the petitioners claimed that they were entitled to the exemption and concessional rate of duty as between two relevant dates 1st of April, 1981 to 17th of September, 1981, for they had not cleared glass and glassware valued at Rs. 15 lakhs. They also urged that the demand made by the Assistant Collector was barred by time. Both the arguments were rejected by the Tribunal. It held that the value of the clearance in the financial year 1981-82 exceeded Rs. 15 lakhs on 18th September, 1981 and, as such, the petitioners were not entitled to the concession. The Tribunal further held that the notice issued on 19th November, 1981 was not barred by time.

2. In this writ petition Mr. J.C. Bhardwaj, learned Counsel for the petitioners, laid emphasis on both these points and urged that according to the figures of clearances mentioned in the notice itself, the total clearances upto 18th September, 1981 was less than Rs. 15 lakhs and, as such the petitioners were entitled to the concession contained in the Notification No. 8/80-C.E. He also challenged the notice dated 9th November, 1981 on the ground that the cause of action for the notice arose on the 1st of April, 1981 from which date the financial year commenced, and as the notice had not been given within six months of 1st April, 1981, it was barred by time.

3. Mr. R.S. Dhavan appearing for the respondent, Collector, Central Excise raised a preliminary objection to the maintainability of the writ petition, as the petitioners have an alternative remedy by way of a reference under Section 35G of the Central Excises and Salt Act, 1944 (In short Act). In support of his contention, learned Counsel cited two decisions of the Supreme Court viz., Lal Ji Haridas v. R.H. Bhatt-(1965) 55 I.T. 415 and Titaghur Paper Mills Co. Ltd. v. State of Orissa : [1983]142ITR663(SC) . Learned Counsel for the petitioners urged in reply that where the Court has entertained the writ petition, the availability of an alternative

remedy would not stand in the way of the hearing and disposal of the writ petition on the merits.

4. It is relevant to mention here that this writ petition is at the admission stage and it was indicated earlier that it may be disposed of finally at the admission stage itself. There are no private parties. Respondent No. 1 is the Tribunal and Respondents 2, 3 and 4 are Government servants who are represented by a counsel. Technically speaking, the writ petition has not been admitted for hearing and, as such, it may be said that it has not been entertained however, we deal with the questions raised in this writ petition.

5. Briefly stated, the plea was that where the statute provides for an alternative remedy by way of a reference to the High Court, a writ petition under Article 226 of the Constitution would not lie. Reference may be made to the decision in Lalji Haridas (Supra) where Gajendragadkar, C.J. speaking for the Court observed :

'The jurisdiction conferred on the High Court under Article 226 of the [Constitution of India](#) is not intended to supersede the jurisdiction and authority of the Income-tax Officers to deal with the merits of all the contentions that the assessee may raise before them, and so, it would be entirely inappropriate to permit an assessee to move the High Court under Article 226 and contend that a notice issued against him is barred by time. That is a matter which the income-tax authorities must consider on the merits in the light of the relevant evidence.'

A similar view was taken in Titaghur Paper Mills Co. Ltd. (Supra). Two writ petitions were filed in Orissa High Court challenging two orders of Assessment passed by the Assistant Sales Tax Officer, Cuttack. These petitions were dismissed in limine. Against the said orders, special Leave petitions were filed in the Supreme Court. A.P. Sen, J., speaking for the Court observed :

'We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the prescribed authority under Sub-section (1) of Section 23 of the Act, then a second appeal to the Tribunal under Sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court

under Section 24 of the Act.'

It is evident from the above that their Lordships held that a reference made to the High Court after the order of the Tribunal was an effective alternative remedy.

6. In the case of *Raleigh Investment Co. Ltd. v. Governor General in Council* (AIR 1947 PC 78), Lord Uthwatt, J., had observed :

'that in the provenance of tax where the Act provided for a complete machinery which enabled an assessee to effectively raise in the courts the question of the validity of an assessment denied an alternative jurisdiction to the High Court to interfere.'

7. In *Titaghur Paper Mills Co. Ltd. (Supra)*, their Lordships observed : 'It is now well recognised that where a right or liability is created by a statute which gives a special remedy provided by that statute only must be availed of.'

It is obvious from the above that where the petitioners could ask for a reference to the High Court on a question of law under Section 35-G of the Act, they had adequate alternative remedy in law. The petitioners have complained that the Assistant Collector, Central Excise and the Collector, Central Excise (Appeals) acquired no jurisdiction to realise any amount as tax from the petitioners, as the total amount of clearances between 1st April, 1981 to 18th September, 1981 was less than Rs. 15 lakhs. In other words, the petitioners had challenged their right to adjudicate in the matter, pleading inherent lack of jurisdiction. Even the question of lack of jurisdiction could be raised in a reference under Section 35-G of the Act before the Tribunal. The petitioners could make an application to the Tribunal to state the case and refer to the High Court. If the Tribunal declined to do so, in that event the petitioners could approach the High Court for the same. The limitation for doing so is sixty days of the date upon which the Collector of Central Excise or the other party is served with notice of an order under Section 35C. Provision to Section 35-G(1) permits the Appellate Tribunal to grant further time of thirty days if sufficient cause for the same is made out. This remedy was not availed of and instead the petitioners have filed the present writ petition under Article 226 of the Constitution. We are satisfied that the petitioners had an alternative remedy and

they have not availed of it.

However, we proceed to consider the questions raised by the learned counsel for the petitioners also. We find no merits in either of them. Our reasons are as follows :

8. Learned counsel for the petitioners vehemently argued that there was total lack of jurisdiction because the total clearance by the petitioners between 1st April, 1981 and 17th September, 1981 was less than Rs. 15 lakhs. This was urged on the basis of the two figures mentioned in the notice as well as in the impugned order. These figures are of Rs. 750,003.20 for the period 1-4-1981 to 25-6-1981 and Rs. 7,48,104.63, for the period 25-6-1981 to 17-9-1981. The total of these two figures is Rs. 14,98,107. 83. There can be no manner of doubt that if the clearance upto 17th September, 1981 alone is taken into consideration the figure would be less than Rs. 15 lakhs, but the clearance of 18th September, 1981 also seems to have been taken into consideration by which the clearance exceeded the sum of Rs. 15 lakhs. This was clearly stated in the notice dated 19-11-1981 (Annexure 3) to the writ petition. In paragraph 5 of the impugned order it has been clearly stated that it was also not denied that the value of the clearances exceeded the limit of Rs. 15 lakhs on the 18th September, 1981. The fact that the clearance exceeded Rs. 15 lakhs on the 18th September, 1981 has not been denied. Consequently, it would be deemed to have been admitted. The consequence will be that the petitioners are not entitled to re-open this matter and more so in the present proceeding under Article 226 of the Constitution.

9. The petitioners are now seeking to raise a dispute on a question of fact. This cannot be permitted to be raised now in writ jurisdiction. The finding by the Tribunal that the clearances exceeded a sum of Rs. 15 lakhs on the 18th September, 1981 has to be accepted. Consequently, the Assistant Collector, Central Excise had the jurisdiction to issue the notice. We, therefore, find no substance in the argument raised by the learned counsel on this point.

10. The next point argued by the learned counsel was on a question of limitation. According to him, the notice issued by the Assistant Collector dated 19th November, 1981 was barred by time. It was urged that since the period during

which the clearance was involved viz., 1st April to 18th September, 1981, the cause of action arose on the 1st April, 1981. This is wholly untenable argument. The clearance reached the sum of Rs. 15 lakhs only on the 18th September, 1981. Time would begin to run from that date. The period of six months had not come to an end and the notice had been issued in two months' time. The notice is not barred by time. We hold accordingly.

11. No other point was argued.

12. For the reasons given above, this writ petition is dismissed with costs to the answering Respondents.

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