

Methodex Systems Ltd. Vs. Union of India (Uoi)

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Court : Madhya Pradesh

Decided On : Feb-26-1997

Reported in : 1998(60)ECC274; 1997(93)ELT340(MP)

Judge : N.K. Jain, J.

Acts : [Companies Act, 1956](#); [Central Excise Act, 1944](#) - Sections 11A, 11A(1), 11A(2), 35 and 35B; [Constitution of India](#) - Articles 226, 227 and 265

Appeal No. : Misc. Petition Nos. 124, 125 and 126 of 1991

Appellant : Methodex Systems Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : B.G. Neema, Adv.

Advocate for Pet/Ap. : S.N. Kholi, Adv.

Judgement :
ORDER

N.K. Jain, J.

1. This order shall dispose of all the three Misc. Petition Nos. 124/91, 125/91 and 126/91 as they are filed by the same petitioner and common questions of law and facts are involved in all the petitions.

2. By these petitions filed under Articles 226/227 and 265 of the [Constitution of India](#) the petitioners seek quashment of show cause notices marked as Annexure H in all the petitions and other consequential reliefs.

3. The petitioner No. 1 is a Company duly incorporated under the [Companies Act, 1956](#). Petitioner No. 2 is a shareholder of the petitioner No. 1 Company. The petitioner Company has set-up a plant at Indore where it manufactures various types of steel office equipments including Card Index Steel Cabinets under the brand name of Methodex Visible Record Cabinet. The respondent No. 4 Superintendent, Central Excise, MOR-IV, Indore has issued three notices Under Section 11A of the Central Excise and Salt Act, 1944 (for short, 'the Act') for the period August 1989 to December 1989 dated 29-1-1990, January 1990 to March 1990, dated 7-5-1990 and April 1990 to August 1990 dated, 10-9-1990, respectively, to show cause as to why the additional Central Excise duty as specified in the said notices and for the aforesaid periods should not be recovered from the petitioner Company. These show cause notices are under challenge in these petitions. According to the petitioners these notices are without jurisdiction. It is further submitted on behalf of the petitioners that petitioner No. 1 Company is being discriminated as it is being taxed at higher rate as compared to other companies like Remington and Godrej.

4. Respondents have filed returns in opposition to the petitions. Shri Nema, counsel for the respondents, right at the threshold submitted that the petitioners should first contest the notices before the appropriate authority itself. He further contended that in the matter of classification of goods, revenue authorities are in better position to seek and appreciate necessary evidence to determine whether or not a particular product would fall under a particular entry and, therefore, this Court ought not entertain these misc. petitions. He has placed reliance on a Supreme Court decision in the case of P. Kesavan & Co. 1996 (81) E.L.T. 7 (S.C.)

5. I have heard counsel for both the parties.

6. A perusal of Sub-section (2) of Section 11A of the Act would reveal that the appropriate authority is required to consider the representation if any made by the person on whom notice is served under Sub-section (1) and then to determine the

amount of duty of excise due from such person. Sections 35 and 35B of the act provide for filing appeals against any decision or order passed under the Act. Second appeal to the Tribunal is also provided against the orders that may be passed by the Collector of Central Excise in first appeal. A complete machinery is thus, provided for redressal of the grievances. That being so, resort to writ jurisdiction of this Court is not permissible.

7. In Labhchand's case (AIR 1994 SC 764) it has been held :

'When a statutory forum or Tribunal is specially created by a statutes for redressal of specified grievances of persons on certain matters, the High Court should nor normally permit such persons to ventilate their specified grievances before it by entertaining petitions under Article 226 of the Constitution is a legal position which is too well settled.'

8. This petition is not tenable on yet another ground. It is also now well settled that in the matters of classification of goods (present petitions also arise out of the same dispute), revenue authorities are in better position to seek and appreciate necessary evidence to determine whether or not a particular product would fall under a particular entry. Dealing with the same question, the Apex Court in the case of P. Kesavan (supra) has observed :

'Where technical matters are involved, and particularly when process of manufacture have become increasingly complicated, it is appropriate that the authorities best competent to deal with such matters should be allowed to do so'.

9. In the result, I, without entering into the question of validity of the show case notices, dispose of these petitions with the under noted directions:

(a) The petitioners shall be free to submit reply to the notices (Annexure H), if not furnished so far, or additional reply if felt necessary, within 30 days from today and may also raise therein the pleas of jurisdiction as well as of discrimination;

(b) The petitioners may also apply to the appropriate authority for permission to lead evidence and to requisition the records pertaining to levy of duty on Remington and Godrej for proper disposal of Notices (Annexure H); and

(c) The petitioners in the event of adverse decisions by the authority, may have recourse to such remedies as may be available to them in law.

10. All the petitions thus stand disposed of as aforesaid but without any order as to costs. Security amount, if any, shall be refunded to the petitioners.

11. This order be retained in MP No. 124/91 and a copy each be placed in MP Nos. 125/91 and 126/91.

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