

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

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Court : Madhya Pradesh

Decided On : Sep-11-1996

Reported in : 1997(95)ELT23(MP)

Judge : A.R. Tiwari, J.

Acts : [Companies Act, 1956](#); [Constitution of India](#) - Articles 226 and 227; Central Excises Act, 1944 - Sections 11A

Appeal No. : Misc. Petition No. 650 of 1986

Appellant : Methodex Systems Pvt. Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : B.G. Neema, Standing Counsel

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

Judgement :

ORDER

A.R. Tiwari, J.

1. The Petitioner No. 1, the Private Limited Company, incorporated under [Companies Act, 1956](#) and its Director, Works & Administration, Petitioner No. 2, have filed this petition under Article 226 of the [Constitution of India](#) seeking

undernoted reliefs :

(i) issue a writ of certiorari or any other writ, order or direction quashing the show cause notice dated 24/25-2-1986;

(ii) issue a writ of prohibition or any other writ order or direction prohibiting the respondents or any of their employees or agents from seeking to levy excise duty upon kraft pockets not manufactured by the petitioner No. 1;

(iii) pass such other orders or directions as this Hon. Court may deem fit and proper in the facts and circumstances of this case, and for this act of kindness, the petitioners shall, as in duty bound, ever pray.

2. Briefly stated, the facts of the case are that petitioner No. 1 is a leading manufacturer and distributor of office equipments. One of the items produced and distributed by the petitioner No. 1 is Visible Card Record Cabinets (VCRC). This VCRC is used, inter alia, for the maintenance of record cards and is a popular office aid used for storage of indexes, lists. The respondent No. 2, (Collector) issued notice under Section 11A of Central Excises and Salt Act, 1944 hearing No. C-No. IV(9)79/85/P/25548, dated 24/25-2-1986, to show cause as to why duty and penalty be not recovered. Against this, show cause notice, petitioners have filed this writ petition. By order dated 30-4-1986, this Court directed the Collector (respondent No. 2) Central Excise & Customs, Indore, not to determine finally amount of duty of excise payable by the petitioner in pursuance of the notice, Annexure P/2, as noted above.

3. Respondents have filed return in oppugnation.

4. I have heard Shri Kohli learned Counsel for the petitioners and Shri B.G. Neema learned Counsel for respondents.

5. Shri Neema, right at the threshold, submitted that petitioners may be left to contest the notice in accordance with law and resort to appropriate remedy.

6. Shri Kohli, submitted that once the petition is admitted for final hearing, it may be heard on merits. He also submitted that notice, Annexure P/2 is without

jurisdiction. He further submitted that petitioner No. 1 is being discriminated, as U is being taxed at higher level, as compared to other concerns viz. Remington & Godrej. He submitted that petitioners filed the application in this petition for an order to respondents to produce documents to show the amount of tax recovered from Remington and Godrej. He submitted that respondents have no authority in law to discriminate in the matter of taxation in identical fact - situation. Shri Neema has opposed these contentions.

7. The Counsel for the petitioners placed reliance on :

(i) 1978 E.L.T. (J 632) (M.P.); Universal Cables Ltd. v. Union of India and Ors. (ii) 1990 (50) E.L.T. 15 (M.P.); Hindustan Electro Graphites Ltd. v. Union of India.

(iii) 1991 (53) E.L.T. 278 (M.P.); Jayant Vitamins Ltd. v. Union of India. (iv) M.P. No. 779/89; Bajaj Tempo Ltd. v. Union of India.

(v) M.P. No. 1817/91; Electro Chem v. Union of India.

(vi) A.I.R. 1950 SC 124; Romesh Thappar v. State of Madras.

(vii) A.I.R. 1959 SC 725; K.K. Kochunni v. State of Madras.

(viii) A.I.R. 1971 Bombay 56; G. V. Godse v. Union of India.

(ix) A.I.R. 1972 Pat. 93; N.P. Mathur v. State of Bihar.

(x) 1987 (30) E.L.T. 62 (M.P.); Dharamsi Morarji Chemical Ltd. v. Union of India.

(xi) 1985 (22) E.L.T. 732 (M.P.); Tata Export Ltd. v. Union of India.

(xii) 1987 (32) E.L.T. 521 (Pat.); Tata Yodogazva Ltd. and Anr. v. Union of India.

(xiii) 1987 (32) E.L.T. 474 (M.P.); Galada Continuous Casting Ltd. v. Asstt. Collector, Central Excise.

8. In AIR 1994 SC 754; State of U.P. v. Labh Chand; it is held as under :

'What a Statutory Forum or Tribunal is specially created by a statute for redressal of specified grievances of persons on certain matters, the High Court should not 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.'

9. The main contention is that the petitioner No. 1 is being discriminated. It is contended that this discrimination delivers considerable dent on the competitive strength of the petitioner No. 1. In my view, this contention demonstrates that adjudication is sought on the question of facts. There is serious dispute on facts in this petition. A writ Court is not the proper forum to seek such adjudication. In my view when more satisfactory solution is available on the terms of the statute itself then resort to Article 226 or 227 by way of writ petition, is not the proper remedy.

10. Mr. Justice Frankfurter enunciated the rule in *Vitaree v. Seaton*; (1959) 359 US 535 : 3 L.Ed 2d 1012 in the following terms :

'An executive agency must be rigorously held to the standards by which it professes its action to be judged.... He that takes the procedural sword shall perish with the Sword.'

11. 'Show cause notices' are not the end, but beginning of the matter. 'Absence of jurisdiction' and 'erroneous exercise of jurisdiction' are not liable to be intermixed. It is not suggested that notice is not under the relevant Act or Provision or not by the proper authority. Writ Court, these days, is receiving matters which can appropriately be contested at other forums fixed by relevant Acts. Is it not the time, ripe indeed, to exercise restraint, halt rush and push such cases towards their proper destination? The calendar of Court is quite congested. Should the writ Court then be not more strict to prevent in flow of cases which can be examined elsewhere and possibly with specific expertise

12. Later in A.I.R. 1994 SC 2377; (*State of Andhra Pradesh v. T.G. Lakshmaiah Setty and Sons*) the Supreme Court in reiteration ruled that orders of assessment, rendered under Tax laws, should be tested under the relevant Act and in no other way. Earlier it was held in A.I.R. 1992 SC 2279; (*Shyam Kishore v. Municipal*

Corporation of Delhi) that recourse to writ jurisdiction is not proper when more satisfactory solution is available on the terms of the statute itself. In my view, writ Court is not supposed to be killer of all evils visible in whatever shape or stage. In a recent verdict, Supreme Court has asked the High Courts to exercise their 'extraordinary and discretionary power under writ jurisdiction with caution.'

13. The implication is that authorities, empowered under various Acts, are expected to function properly and to show greater responsibility to avoid steps which are avoidable. They are required, may expected, to do the rational thing ever unwilling to explore other alternatives before electing to do that. Lord Keynes observed that 'Men will do the rational thing but only after exploring all other alternatives.' Preamble to the [Constitution of India](#) promises dignity and this then demands doing of rational thing imprimis. In my view, the day should be deemed as done when men could afford to search alternatives. Truth must be seen to triumph.

14. This Court in M.P. No. 2230/93; 1995 (77) E.L.T. 74 (M.P.) (Grasim Industries Ltd. v. The Collector of Customs and Anr.), filed against show cause notice had declined to examine merits and had left the petitioner to contest the matter before the authorities. The order dated 27-1-1995 was upheld by the Letters Patent Bench and SLP was dismissed by the Apex Court. Nothing substantial is urged to take a different view in the matter. Law is a leveller and attempts to attain uniformity.

15. I, therefore, do not examine the question of validity of show cause notice (Annexure P/2) though debated, and held that the decisions relied upon are distinguishable. There are no exceptional circumstances. Plea of discrimination requires scrutiny of facts which are demonstrably disputed.

16. In the result, I dispose of this petition with directions as under -

(a) Notice (Annexure P/2) survives but the petitioners shall have freedom to submit reply, if not furnished so far, or additional reply, if felt necessary, within one month from today and to raise, if so advised, pleas of jurisdiction as well as discrimination vis-a-vis Remington and Godrej in matter of taxation on the principle that 'Like

should be treated alike.'

(b) The petitioners may also apply to the appropriate authority, if necessary to requisition the records pertaining to levy of duty from Remington and Godrej for proper disposal of the notice (Annexure P/2) and the authority may consider such prayer, if warranted by facts and permissible by law.

(c) The petitioners, in the event of adverse orders by the authorities, may have recourse to remedies available under the aforesaid Act.

17. The petition is, thus, disposed of in terms indicated above but with no orders as to costs. Counsel fee for each side is, however, fixed at Rs. 2,000/-, if certified. Security cost, if any, shall be refunded after due verification.

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