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Court : Orissa

Decided On : Jul-30-1997

Reported in : 2003(162)ELT82(Ori)

Judge : A. Pasayat and ;S.C. Datta, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Original Jurisdiction Case Nos. 13201 and 13437 of 1996

Appellant : Jindal Strips Ltd.

Respondent : Superintendent, C. Ex. and Cus.

Advocate for Def. : Sanjit Mohanty, Sr. Standing Counsel (Central)

Advocate for Pet/Ap. : P.K. Mishra, Adv.

Judgement :

ORDER

A. Pasayat, J.

1. As similar points are involved in both the writ petitions, they were heard together and are disposed of by this common judgment.

2. Dispute revolves round the question whether petitioners are removing 'Iron ore concentrate' or 'Iron ore'. According to petitioners, it is the latter, while according to

Central Excise and Customs authorities it is the former. Authorities have initiated action for alleged violation of several provisions of Central Excise Rules, 1944 (in short 'Rules') framed under Central Excises and Salt Act, 1944 (in short the 'Act'), with reference to certain entries in Central Excise Tariff Act, 1985 (in short 'Tariff Act').

3. We find that at the stage of issuance of show cause, notice, petitioners have moved this Court for interference. Petitioners with reference to various materials and documents have assailed the action, labelling it to be uncalled for, and to be on a misreading of statutory provisions. It is stated that there was pre-adjudication of liability. While issuing a show cause notice, a prima facie view is expressed. If a reply is submitted to the show cause notice issued, the same is to be considered on its own merit irrespective of any prima facie view taken while issuing notice.

4. The writ applications have been filed against show cause notice in each case. According to learned Counsel for opposite parties, the writ applications are premature, misconceived and the authority issuing it has jurisdiction. It is to be noticed that there is no attack against vires of any statutory provision governing the matter. No question of infringement of fundamental right guaranteed by the Constitution is alleged or proved. Whether notice is ex facie a nullity or without jurisdiction can be challenged before the authority issuing the notice, which is to be adjudicated by the authority. It is trite that when an authority's jurisdiction to proceed in the matter is questioned, that has to be decided first. After the authority decides that it has jurisdiction to proceed in the matter, it can continue the proceeding. If on the other hand, it comes to a finding that it lacks jurisdiction, proceeding has to be dropped.

It is only when the notice is in the traditional sense of the expressions, ex facie 'nullity' or totally 'without jurisdiction', a writ petition under Article 226 of the Constitution against a show cause notice may be entertained. At that stage it should be shown that the authority has no power or jurisdiction to enter upon the enquiry in question. In all other cases, it is imperated that the party should avail of the alternative remedy and show cause against the same before the authority concerned and take up objection regarding jurisdiction also, then. In the event of

an adverse decision, it will certainly be open to him to assail the same before the prescribed statutory authority. Similar view was expressed by the Apex Court in the *Executive Engineer, Bihar State Housing Board v. Ramesh Ku. Singh and Ors.* - J.T. 1995 (8) S.C. 331.

Jurisdiction is a dignity which a man hath by a power to do justice in causes of complaint made before him (See *Termes de la Ley*). It essentially means power of the Court to hear and determine a cause to adjudicate or exercise any judicial power in relation to it. The question of jurisdiction is determinable at the commencement not at the conclusion of enquiry. 'Jurisdiction' in (i) the authority or power of a Court or as authority to entertain and decide on any judicial or quasi-judicial proceeding, (ii) the area over which the power of the Court or authority extends. The term has both a narrow and wider meaning. In the sense of the former, it means an authority to embark upon an enquiry, in the sense of the latter, it is used in several aspects, one of such aspects being that the decision is in non-compliance with the provisions of the concerned statute. To put differently, the term means authority or power to act in a matter, and not authority or power to act in a particular manner. It imports authority to expound or apply the laws, and excludes the idea of power to make the laws; and means (i) the right to adjudicate on a given point, (ii) the local extent within which the Court/ Tribunal/authority can and does exercise the right, when ascertained. Jurisdiction is a power introduced for the public good on account of the necessity of dispensing justice 'The Maxim is' *Jurisdiction est potestas de publico introducta, cum necessitate Juris dicendi* (Bouvier). Jurisdiction is a power introduced of common right (by public authority or for the common benefit) arising out of the necessity of declaring the law.

In case question of jurisdiction is raised, it has to be decided before any adjudication on merits. Where jurisdiction is challenged, the Court or the Tribunal cannot refuse to enter into the questions on which its jurisdiction depends. The question whether the Tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature, and it is determinable as indicated above 'at the commencement, not at the conclusion, of the enquiry'. Similar view was taken in *Rex v. Boltan* (1841) 1 Q. B.66 to which reference has been made by

the Apex Court in the case of Ujjan Bai v. State of Uttar Pradesh - A.I.R. 1962 S.C 1621. It may be added that an enquiry whether the Court-Tribunal or Authority has jurisdiction in any particular case is not an exercise of jurisdiction over the case itself, but is really an investigation as to whether the conditions of cognisance are satisfied.

5. According to the petitioners, the view expressed by the Superintendent of Central Excise and Customs is not in accordance with law. It is open to the petitioners to highlight its stand before the authority before whom the show cause reply is to be submitted. If reply to show cause is submitted within a month from today, the same shall be considered in accordance with law by the concerned authority by taking into consideration all relevant aspects.

5. In case adjudication is made adverse to the petitioners, petitioners have to avail the statutory remedy. It is submitted that sometimes there is delay in disposal of the stay application which causes prejudice. If any motion is made before the original authority to stay recovery of demand, if any, the same shall be considered in its proper perspective and it would be appropriate if no coercive action is taken till disposal of stay application.

6. The writ applications are disposed off.

S.D. Datta, J.

7. I agree

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