i.T.C. Ltd. Vs. Collector of Central Excise (Appeals), Madras

i.T.C. Ltd. Vs. Collector of Central Excise (Appeals), Madras

SooperKanoon Citation : sooperkanoon.com/790766

Court : Chennai

Decided On : Nov-11-1993

Reported in : 1994(46)ECC178; 1994(69)ELT458(Mad)

Judge : Kanakaraj, J.

Appeal No. : Writ Petition Nos. 9766 of 1987 and 5054 of 1991

Appellant : i.T.C. Ltd.

Respondent : Collector of Central Excise (Appeals), Madras

Advocate for Def. : Mr. R. Krishnamurthy, Adv.

Advocate for Pet/Ap. : Mr. Habibullah Badsha, Adv.

Judgement :
ORDER

1. The petitioners are Public Limited Company having their head office at Calcutta. They are engaged in the manufacture of Cigarettes of different brands. They have factories at various places in India. These writ petitions are with reference to the factory at Bangalore. The controversy surrounding the interpretation of Section 4 of the Central Excise and Salt Act, 1944 (hereinafter called 'the Act') with reference to post-manufacturing expenses has been set at rest by the Supreme Court of India in the case of Union of India v. Bombay Tyres International Limited 1984 (17) E.L.T. 329. Since various Collectors of Central Excise having jurisdiction

over the petitioners were issuing show cause notices on the proper method of determining assessable value, the Director General of Inspection (Customs and Central Excise) was named as the Authority for the purpose of adjudicating all such show cause notices issued from different Collectorates. The Director-General ultimately passed an order on 10-4-1986. The Director-General had directed that the 'entire money value consideration has to be added to the price for working out the assessable value for the purpose of levy and collection of excise duty on the Cigarettes'. In pursuance of the order of the Director- General, a workshop was held by a team of officers and the total amount of differential duty pertaining to the various units, was worked out and in so far as the Bangalore unit was concerned the duty was determined as Rs. 3,32,70,390.75. By an order dated 15-7-1986 the second respondent made a demand for the said amount of differential duty and the petitioner complied with the demand and paid the amount. No appeal was filed against the order of the Director General dated 10-4-1986 either by the Department or by the assessee, at least for a considerable number of years.

2. The cause of action for the present writ petition is a subsequent letter dated 29-9-1987 issued by the second respondent, calling upon the petitioner to pay a sum of Rs. 27,57,93,086.75. This amount is said to have been arrived at by adding the additional consideration to the assessable value of Cigarettes, already assessed on a provisional basis. Before this additional amount was arrived the second respondent did not issue any show cause notice to the petitioner or give the petitioner an opportunity to participate in the enquiry for determining the additional amount. The petitioners filed an appeal to the first respondent on 5-10-1987, alongwith an application for waiver of pre-deposit duty. It is the case of the petitioners that they came to understand that the first respondent was not satisfied about the maintainability of the appeal and apprehending recovery proceedings, W.P. No. 9766 of 1987 was filed on 6-10-1987 challenging the demand dated 29-9-1987 for the additional amount. The writ petition was admitted on 8-10-1987 and an interim stay was granted. Subsequently, on 30-10-1987, the first respondent, dismissed the appeal as not maintainable. By way of an abundant caution W.P. No. 5054 of 1991 has been against the order of the first respondent dated 30-10-1987.

3. I am saved of the necessity to go into the legal aspects of the case, because on the preliminary issue regarding the violation of principles of natural justice, there is a direct decision of the High Court of Patna. That decision was rendered on 16-5-1990 in respect of an identical demand against the petitioners making an additional demand for differential duty arising out of the very same order of the Director General, dated 10-4-1986. Patna High Court rendered its decision as follows :-

'How far the petitioner-Company could have succeeded if an opportunity of hearing had been given to the petitioner-Company cannot be prejudged. But demand for additional excise duty amounting to Rs. 8,29,10,883.25 without giving notice to the petitioner-Company to show cause why the said amount be not held to be payable by it, is contrary to the principles of natural justice and the scheme of the Act and cannot be sustained in law.'

4. Following the said judgment of the Patna High Court, Writ Petition No. 9766 of 1987 is allowed and the impugned demand dated 29-9-1987 is set aside. It is open to the respondents to pass fresh orders in accordance with law after giving notice to the petitioners and giving them an opportunity to put forth their objections, if necessary, in a properly held enquiry. W.P. No. 9766 of 1987 is allowed in the above terms. In view of the order in W.P. No. 9766 of 1987, no orders are necessary in W.P. No. 5054 of 1991 and the said writ petition is dismissed as unnecessary. No costs.