

India Pistons Ltd. Vs. Union of India

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Court : Chennai

Decided On : Nov-25-1996

Reported in : 1999(113)ELT793(Mad)

Judge : N.V. Balasubramanian, J.

Appeal No. : Writ Petition No. 1959 of 1987

Appellant : India Pistons Ltd.

Respondent : Union of India

Advocate for Def. : Shri V.T. Gopalan, Adv. for ;S. Udayakumar, A.C.C.S.C.

Advocate for Pet/Ap. : Shri Krishna Srinivasan, Adv. for ;M/s. Ramasubramanian & Associates

Judgement :

ORDER

1. The petitioner is a company engaged in the business of manufacture and sale of motor vehicle parts and accessories, falling under Chapter No. 84.09 of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Central Excise Act). The petitioner is required to maintain accounts of the goods manufactured by it for the purpose of levy and assessment of excise duty. During the years 1980, 1981 and 1982, the annual stock taking was taken of the goods manufactured and assessed and in the annual stock taking account, the Excise Department

authorities found that there were alleged shortages in certain goods and excess in certain goods. According to the assessee, the deficiency in some goods and the excess in certain other goods were found, because the assessee is manufacturing large number of similar looking goods such as piston rings, gudgeon pins etc. and the variation in the dimension is so small that one could mistake one with the other. The authorities invoked Rule 223A of the Central Excise Rules, 1944 and called upon the assessee to explain the shortages and the assessee was given an opportunity to show cause why penalty should also be not imposed on the assessee. The case of the assessee before the authorities was that the show cause notice has been issued after the expiry of the period specified under Section 11A of the Central Excise Act and it was pleaded that the shortages, if any, can be set off against the excess and there is no justification for the departmental authorities to demand excise duty on the alleged shortage alone. The Assistant Collector of Central Excise overruled the objections preferred by the assessee and confirmed the demand of Rs. 1,60,623.12 in respect of shortages under Rule 223A of the Central Excise Rules, 1944 and directed the goods found in excess to be entered into R.G.I. account. The Assistant Collector also imposed a penalty of Rs. 2,000/-. The petitioner filed an appeal before the Collector of Central Excise (Appeals). The first appellate authority held that the Assistant Collector ought to have adjusted the shortages against the excess and in this view of the matter, he cancelled the penalty and remitted the matter to the Assistant Collector for fresh consideration. The Collector of Central Excise in exercise of the powers under Section 35B(2) of the Central Excise Act directed the Superintendent of Central Excise to prefer an appeal to the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'Appellate Tribunal'), against the order passed by the Collector of Central Excise (Appeals), Madras in the case of assessee company. Consequently, an appeal was preferred before the Appellate Tribunal by the Collector of Central Excise, Madras. The assessee preferred a cross-objection on 14-2-1985 before the Appellate Tribunal on the ground that consequent to the amendment of Section 35 and insertion of Section 35EE by the Finance Act, 1984, the subject matter cannot be dealt with by the Appellate Tribunal and hence, the appeal was liable to be rejected in limine. The Appellate Tribunal by an order dated 22-1-1986 held that the proper forum competent to entertain the matter is

only the Central Government in terms of Section 35EE of the Act. The Appellate Tribunal also held that since appeals were pending in the registry of the Tribunal for a considerable time, the appeal papers should be transmitted to the revisional authority via, the Government of India for being dealt with in accordance with law. The assessee company challenged the order of the Tribunal remitting the matter to the Central Government on the ground that when once the Appellate Tribunal has found that it had no jurisdiction to hear and decide the appeal, the only order that could be passed was either to reject or dismiss the appeal. Hence, it was contended that the direction of the Appellate Tribunal directing the transmission of the papers to the Government of India was improper and liable to be quashed.

2. This Court by an order in W.P. No. 5698 of 1986 upheld the contentions of the assessee company and quashed the above part of the order directing the transmission of the appeal papers to the Central Government. This Court therefore, held that the Central Government cannot hear the matter and directed the Central Government to return the papers to the Appellate Tribunal for the purpose of returning the same to the appellant before the Tribunal to present the same before the forum having jurisdiction, if so advised, and consequently, the Central Government transferred the papers to the Appellate Tribunal. On 9-1-1987, the Central Government, in exercise of powers under Section 35EE(4) of the Central Excises and Salt Act, 1944, issued the show cause notice to the assessee company on the ground that the order of the Collector (Appeals) dated 3-1-1985 was found to be illegal, improper and incorrect for the reasons set out in the notice. The Government therefore, prima facie felt that the impugned order-in-appeal called for revision and the assessee company was given a show cause notice to submit its reply as to why the order passed by the Collector of Central Excise should not be revised. The assessee company has challenged the show cause notice in the present writ proceedings.

3. Mr. Krishna Srinivas, learned Counsel for the petitioner challenged the impugned order on the ground that the issue of notice is arbitrary and without jurisdiction. He submitted that the Collector of Central Excise, after filing an appeal before the Appellate Tribunal against the order of the Collector of Central Excise (Appeals), was not justified in issuing the impugned proceedings. According to the

learned Counsel for the petitioner, though the impugned notice was issued by the Government of India, the Collector of Central Excise is an Officer of the Government of India, and after having failed in his attempt to set aside the order of the Collector of Central Excise (Appeals) before the Tribunal, the Government of India is not justified in issuing the impugned notice. He also referred to the judgment of this Court in W.P. No. 5698 of 1986 : 1987(27)ELT651(Mad) wherein the learned Judge has held that the fifth respondent in the said writ petition viz., the Under Secretary, Ministry of Finance, cannot hear the revision any more. Learned Counsel therefore, submitted that by issue of the impugned notice, the petitioner is deprived of valuable plea of limitation and having failed in the appeal proceeding. It is not open to the respondent to invoke the revisional powers. It is also submitted that though Section 35EE(4) of the Act does not prescribe any period of limitation for the exercise of power of revision, but referring to Sections 35, 35B, 35E and 35EE of the Central Excise Act, Sections 263 and 264 of the Income Tax Act, Section 24(1) of the G.T. Act, Sections 22(1) and 23 of the Hotel Receipts Act, 1980, Section 24(2)(c) of the Tamil Nadu General Sales Tax Act and Section 30 of the T.N.C.L.T. Act, he submitted that the period of limitation should also be read into the provision of Section 35EE(4) of the Central Excise Act. He placed reliance on a decision of the Supreme Court in C.I.T., Calcutta v. National Taj Traders : [1980]121ITR535(SC) and another decision of the Supreme Court in Kahar Singh and Ors v. The State (Delhi Admn.) : 1989 CriLJ1 . Learned Counsel also referred to the provisions of Section 35EE(6) of the Act and contended that such provisions provide that the Central Government should issue show cause notice under the section within the time limit provided under Section 11A of the Act, in cases where the duty of excise has not been levied or short levied and under Section 11A of the Act, a time limit of six months from the relevant date is prescribed for recovery of duties not levied or paid or short levied or short paid or erroneously refunded and where there was collusion or willful misstatement or suppression of facts or contravention of any of the provisions of the Act, the period will be five years instead of six months as provided under Section 11A(1) of the Act. He, therefore, submitted that the notice issued beyond the period of five years from the relevant date, is not valid and the period prescribed under Section 11A of the Act should be imported to the provisions of Section 35EE(4) of the Act and

hence, the impugned notice is without jurisdiction.

4. Mr. V. T. Gopalan, learned Senior Counsel for the respondent submitted that the course of events that happened in the case would indicate that the respondent has exercised the power within the reasonable time. Mr. V. T. Gopalan, learned Senior Counsel submitted that it is not open to the petitioner to plead that the period of limitation for exercising revisionary powers should be read into Section 35EE(4) of the Act in the light of other provisions of the Central Excise Act or other provisions of some other Acts. According to the learned Senior Counsel appearing for the respondent, when the legislature has not provided a period of limitation, it is not open to the Court to prescribe a period of limitation for the exercise of revisional powers under Section 35EE(4) of the Central Excise Act, and if the Court prescribes a period of limitation for the exercise of statutory power, the Court would be performing a legislative Act. Learned Senior Counsel also submitted that it cannot also be stated that the power is exercised after an unreasonable delay, considering the course of litigation that took place before several forums including that of High Court. The respondent has issued show cause notice after the decision of this Court in W.P. No. 5698 of 1986 rendered on 23-9-1986 and the impugned notice was issued after returning the papers to the Appellate Tribunal on 9-1-1987. Hence, he submitted that there was no unreasonable delay in issuing the notice. He strongly placed reliance on a decision reported in *Government of India v. Citedal Fine Pharmaceuticals* : [1990]184ITR467(SC) . As regards the applicability of Section 35EE(5) of the Act, he submitted that it is not a case of an order enhancing any penalty or imposition of fine in lieu of confiscation. He also submitted that Section 35EE(6) of the Act has no application to the facts of the case, because by the impugned order, the respondent is not trying to impose any duty which has not been levied or short levied. According to the learned Senior Counsel, the duty has already been levied by the Assistant Collector of Central Excise and hence, the provisions of Section 35EE(6) of the Act are not applicable to the facts of the case. As regards the plea of limitation under Section 11A of the Act, since it is not a case falling under Section 35EE(6) of the Act, the limitation provided under Section 11A of the Act has no application to the facts of the case for the exercise of powers of revision under Section 35EE(4) of the Act.

5. I have carefully considered the arguments submitted on behalf of the learned Counsel for the petitioner and learned Senior Counsel for the respondent. On 24-8-1984, the Assistant Collector of Central Excise levied duty of Central Excise in respect of certain shortages under Rule 223A of the Central Excise Rules, which was set aside by the Collector of Central Excise (Appeals) by an order dated 6-12-1984. Though the Collector of Central Excise filed an appeal before the Appellate Tribunal, the Appellate Tribunal held that the appeal cannot be instituted before the Tribunal in view of the proviso to Section 35B(1) of the Central Excise Act. The Appellate Tribunal after holding that the appeal cannot be instituted, directed the transmission of the appeal papers to the Central Government for exercise of its power of revision under Section 35EE(1). This Court held that the procedure adopted by the Tribunal was not correct and hence, on the basis of the decision of this Court, the Appellate Tribunal returned the appeal papers to the appellant before the Tribunal on 11-11-1996. Subsequently, in July, 1987, show cause notice was issued by the Government of India in exercise of the power under Section 35EE(4) of the Act. Section 35EE(4) of the Central Excise Act reads as under :

'The Central Government may, on its own motion, annul or modify any order referred to in sub-section (1).'

It is significant to notice that no period of limitation is prescribed under the provisions of Section 35EE(4) for the exercise of the suo motu power of revision by the Central Government. It is relevant to notice that for exercise of powers of revision on the basis of an application under Section 35EE(1), the Act provides a period of limitation of three months from the date of communication of the order to the applicant, but no such limitation is found in Section 35EE(4) of the Act.

6. Mr. Krishna Srinivas, learned Counsel appearing for the petitioner submitted that Sections 35E(2)(1)(3), 35E(2)(1)(3) and 35EE(1) of the Act, prescribes limitation for the exercise of the power by the authorities mentioned therein and it would create an anomalous situation, if no limitation is introduced for the suo motu exercise of power by the Central Government. I am not able to accept the contention of the learned Counsel for the petitioner. Section 35 of the Central

Excise Act provides for an appeal to the Collector (Appeals) and the legislature has naturally provided a period of limitation for preferring an appeal, Section 35E is also a provision for preferring appeal to the Appellate Tribunal. In so far as Section 35E is concerned, it deals with two situations (1) the first category relates to the exercise of power by the Board for preferring an appeal against the order of a Collector of Central Excise, when he passed the order as adjudicating authority. Section 35(E)(2) deals with the power of the Collector of Central Excise to examine the order of the adjudicating authority subordinate to him and for giving a suitable direction to file an appeal to the Collector (Appeals). The situation contemplated under Section 35EE(4) is entirely different i.e., it is for the suo motu exercise of power by the Central Government itself. Section 35EE of the Act has been introduced because under Section 35B of the Act the jurisdiction of the Appellate Tribunal with reference to Central Excise cases relating to certain categories of cases has been excluded and Section 35EE has been introduced for the revision by the Central Government in all the types of cases excluded from the jurisdiction of the Appellate Tribunal and a close study of the provision would clearly show that the provisions are in line of the provisions that existed prior to the setting up the Appellate Tribunal. Section 35EE of the Act confers the powers of the revision in respect of certain orders of the Collector of Central Excise (Appeals), and the legislature has not prescribed any time limit to exercise the power of suo motu revision. When the intention of the legislature is clear, it is not open to the Court to read into the provision of Section 35EE(4) of the Act or engraft the provision of limitation for the exercise of suo motu revisional power. Reliance was placed by the learned Counsel for the petitioner, in *C.I.T. Calcutta v. National Taj Traders* 1980 (1) S.C.J. 426 wherein it is held that casus omissus issue should not be readily inferred and the statute should be read as a whole and if a literal interpretation of a particular clause leads to a manifestly absurd or an anomalous result, it could not have been intended by the legislature. The said decision is not applicable to the facts of the case as the interpretation of Section 35EE(4) of the Act would not lead to an absurd or anomalous situation. The decision of the Supreme Court in *Rajindera Prasad Dhashane v. Union of India & Ors.* U.T. 1988 (3) S.C. 1901 to the effect that the statute should be read to ensure coherence and consistency within the law as a whole and to avoid undesirable

consequences. On the other hand, in a decision of the Supreme Court in *Government of India v. Citedal Fine Pharmaceuticals* : [1990]184ITR467(SC) , the Supreme Court held that where a rule does not provide for any period of limitation for the recovery of duty, it cannot be held that the rule is an unreasonable and violative of Article 14 of the Constitution. The Supreme Court further held that whatever may be the reasonable period, it depends upon the facts of each case. Hence, it is impermissible for this court to read a period of limitation into the provisions of Section 35EE(4) of the Central Excise Act when the legislature has not expressly provided for the same.

7. The next contention of the learned Counsel for the petitioner is that the issue of show cause notice is arbitrary and against the decision of this Court in W.P. No. 5698 of 1986 : 1987(27)ELT651(Mad) . Learned Counsel for the petitioner strongly placed reliance upon the observation made by this Court that the 5th respondent cannot hear the revisionary more. The judgment of this Court in W.P. No. 5698 of 1986 : 1987(27)ELT651(Mad) was rendered in connection with the question of propriety of the Appellate Tribunal in transmitting papers to the Central Government and when the petitioner challenged the order of transmission to the Central Government, this Court, in the above judgment, has taken the view that the Appellate Tribunal was not correct in law in forwarding the papers to the Central Government when it found that it has no jurisdiction to deal with the matter. According to the judgment rendered by this Court, the Appellate Tribunal should have returned the papers to the appellant before the Appellate Tribunal and this Court held that the procedure adopted by the Appellate Tribunal was not correct. It is only in that context, this Court held that the 5th respondent viz., the Under Secretary, Ministry of Finance should not hear the revision any more. It is well settled that the observation made by the Court has to be read in the context of the case and it is not possible to pick up one sentence from the judgment and apply the same in a different context. Hence, it is not possible for the petitioner to rely upon that observation made by this Court in a different context and apply the same to certain other de novo proceedings initiated by the respondent. This position is well settled by the Supreme Court in a decision in *C.I.T. v. Sun Engineering Works P. Ltd.* (1988) I.T.R. 297 wherein the Supreme Court held as under :

'It is neither desirable nor permissible to pick out a work or a sentence from the judgment of the Supreme Court divorced from the context of the question under consideration and treat it to be the complete law declared by the court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the court. A decision of the Supreme Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision at a later case, courts must carefully try to ascertain the true principle laid down by the decision.'

8. The next contention that was raised by him is that the petitioner has been deprived of valuable right of limitation and hence, the respondent has no jurisdiction to issue the interim show cause notice. As already seen, Section 35EE(4) of the Act does not prescribe any period of limitation for the Central Government to exercise the suo motu power to revision to annul or modify an order referred to under Section 35B(1) of the Central Excise Act. I have already taken a view that there is no period of limitation prescribed under Section 35EE(4) of the Act and hence, it is not possible to accept the contention of the learned Counsel for the petitioner that it is deprived of the valuable right of limitation. Secondly, it must be remembered that the power under Section 35EE(4) is a suo motu power of revision, and the appellate power under Section 35B and the revisional power under Section 35EE operate in different fields and hence, it is not possible to accept the contention of the learned Counsel for the petitioner that it has been deprived of valuable right of limitation. Further, as held by this Court in *Salem Provident Fund Society v. Commr. of Income Tax* : [1961]42ITR547(Mad) wherein this Court has taken a view that the real question in a given case is whether the statutory requirements are satisfied and if in a given case the requirements are satisfied, the authority can have recourse to either of the powers and the mere overlapping of the power is not a bar to re-course to either of the sections at the choice of the assessing authority. Hence, I am of the view that the availability of power to the Central Government under Section 35EE(1) of the Central Excise Act, is not a bar to exercise the suo motu jurisdiction vested in the Central Government under Section 35EE(4) of the Act. The only question that has to be asked is whether the statutory requirements of Section 35EE(4) of the Central Excise Act are satisfied for the initiation of the suo motu power of revision,

the statutory conditions are satisfied, it is not open to this Court to prevent the revisional authority from exercising the statutory power conferred on the Central Government under Section 35EE(4) of the Act by placing reliance on some other provision of Central Excise Act or other provisions of other Acts. Hence, I am not able to accept the contention of the learned Counsel for the petitioner that, it has been deprived of valuable plea of limitation and the Central Government has no power to exercise the power of revision.

9. The next contention that has been raised by the learned Counsel for the petitioner is that under Section 35EE(5) of Central Excise Act, no order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed in a case where an order is passed under Section 35A of the Act enhancing the penalty or fine in lieu of confiscation or confiscating goods of greater value, unless the person is given a show cause notice within one year from the date of the order sought to be annulled. A bare reading of Section 35EE(5) of the Act would clearly show that it has no application to the facts of the case as it is not a case of enhancing penalty or fine in lieu of confiscation of goods.

10. Learned Counsel for the petitioner also relied upon Section 35EE(6) of the Act and contended that where the Central Government is of the opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under Section 35EE(6) of the Act, unless the person affected is given a show cause notice within the time limit prescribed under Section 11A of the Act. According to the learned Counsel for the petitioner, the maximum time limit specified under Section 11A of the Act is five years from the relevant date and since the time limit prescribed under Section 11A of the Act has already expired, the impugned notice issued after the time limit prescribed under Section 11A of the Act is not valid in law. This contention is also not sustainable, because it is not a case where any duty has not been levied or it is also not a case where any duty has been short levied. As already seen, the duty has already been levied but the duty levied was set aside in appeal. Hence, on the terms of Section 35EE(6) of the Act, the impugned notice does not fall within any of the categories of cases mentioned in Section 35EE(6) of the Act. Hence, this contention is also not acceptable and is liable to be rejected.

11. The only question that has to be considered is whether the power of suo motu revision has been exercised within the reasonable time. The course of events that has taken place in the litigation clearly shows that there is no unreasonable delay on the part of the Central Government in exercising the power of revision. It is not open to the petitioner to ignore the events that happened subsequent to the order of the Collector of Central Excise. The Central Government, on the facts of the case, has acted as swiftly as possible and within the reasonable period from the date of the judgment of this Court, and hence, I am not able to accept the contention of the learned Counsel for the petitioner that there is an unreasonable delay on the part of the Central Government in initiating the proceedings.

12. Further, the writ petition has been filed challenging the show cause notice. Though the respondents, in fairness, have not challenged the maintainability of the writ petition challenging the show cause notice, I am of the view that the writ petition is not maintainable, and it deserves to be dismissed, and accordingly, it is dismissed. No cost.