Supreme Court of India
Union Of India (Uoi) vs Maheshwari Woollen Mills on 18 February, 1992
Equivalent citations: 2003 (89) ECC 740
Bench: S Ranganathan, V Ramaswamy, Y Dayal
ORDER

1. After hearing both counsel, leave is granted and the appeal is disposed of on the merits.

2. The respondent (hereinafter referred to as 'the assessee') challenged the validity of a show cause notice dated 2-12-1988 issued by the Collector of Central Excise, Chandigarh under Section 11A of the Central Excises and Salt Act, 1944. The show cause notice stated that there was information on record from which it appeared that the assessee, during the period from November, 1983 to July, 1988, had, in contravention of the provisions of the Central Excise Rules, removed clandestinely 1, 37, 016 kgs. of woollen worsted yarn of composition 70% wool and 30% nylon without payment of Central Excise Duty and without issuing Central Excise gate passes and thus evaded payment of Central Excise Duty amounting to about Rs. 30 lacs.

3. The assessee filed replies to the show cause notice on 11-4-1989 and 28-4-1989. It, however, received what has been described as an "addendum" to the show cause notice on 7th March, 1990 setting out some further material that had come to the notice of the Collector. Thereupon, the assessee filed a writ petition in the High Court of Punjab and Haryana. This writ petition has been allowed by the High Court and the Union of India is in appeal.

4. The short ground on which the High Court has allowed the writ petition is that the notice had been issued beyond a period of six months from the relevant dates and that the Department had not met the assessee's objections that the notice was time barred. According to the High Court, it was the duty of the Department to first decide the objections before proceeding further in the matter. The writ petition was, therefore, allowed. The notices dated 2-12-1988 and 7-3-1990 were quashed as being vague and indefinite. However, the High Court added that "the Union of India would be at liberty to issue fresh notices by disclosing to the petitioners was to how the impugned show cause notices issued to them were within jurisdiction being within the period of limitation and on what basis of material the said notices were based".

5. The learned Additional Solicitor General has invited our attention to the show cause notice dated 2-12-1988 and the supplementary notice issued on 7-3-1990. The notice dated 2-12-1988 is a very detailed one. It explains that enquiries had revealed that during the period November, 1983 to July, 1988, the assessee had supplied 1,37,015.500 kgs. of woollen worsted yarn of certain specification to the Directorate General of Supplies and Disposal (DGS&D), New Delhi. According to the assessee, a part of this yarn had been purchased from different parties, and these purchases had been utilised to make the supplies to the DGS&D. The notice, however, noticed out that the yarn alleged to have been purchased did not conform to the specification given in the approved tenders. It was also pointed out that the assessee had not obtained permission under Rule 15A to bring into its premises the duty paid goods which, it alleged, had been purchased from the various parties. It was also observed that the scrutiny of the files with the DGS&D showed that the files contained two invoices -

one hand written and the other typed one bearing the same number. The typed one contained a description of the goods in conformity with the specifications of the authorities but the written matter did not tally with the office bills issued from the godown and contained corrections, additions and alterations. On the basis of this material, it appeared to the Department that the goods supplied to DGS&D were not the goods which the assessee had purchased as alleged but must have been met out of the production removed clandestinely by the assessee.

6. Having gone through the details, briefly set out above, there can be no doubt that the notice issued was clearly one on the basis of which a notice could be issued within the extended period of limitation under the proviso to Section 11A of the Central Excises and Salt Act was applicable. In our opinion, the High Court was also in error in thinking that there should be a preliminary enquiry and a preliminary decision to establish that show cause notice had been issued within the period of limitation. We fail to see how in a case of this type and with the material referred to in the notice it could be said that the action taken under Section 11A was without any material. In our opinion, the High Court erred in -holding that the issue of the show cause notice was barred by limitation. It is also to be noticed that, in this particular case, even in the reply given by the assessee to the show cause notice his grievance was that a portion of the period recovered by the notice (prior to 1-12-83) was given beyond the period of five years. In other words, there was no serious dispute in the reply that the period of five years was applicable to the present case. We are, therefore, of the opinion that the High Court erred in quashing the show cause notice as barred by limitation. We may also point out that the purported liberty given to the Department to issue fresh notices "by disclosing how the impugned show cause notice" is within the period of limitation is without meaning and ineffective in so far as a major portion of the period covered is concerned.

7. Shri Madhava Reddy, learned Counsel for the respondents contended that in this case certain other objections had also been taken by the assessee before the High Court and these have not been dealt with by the High Court as it allowed the writ petition on the point of limitation. We have heard learned Counsel on these points but we find no reason to uphold the order of the High Court quashing the show cause notices on the points raised by the learned Counsel.

8. His first contention is that the notice had been issued by the Collector of Central Excise was under the directions of higher authorities and not on his own independent volition and on the scrutiny of material before him. This was not one of the objections taken in the reply to the show cause notice. That apart, even the allegation made in this respect in the writ petition was very vague and indefinite. The contention is also without force considering the detailed narration of facts set out in this notice on the basis of which action has been taken. We also doubt whether, under the Central Excise Act (the language of which is different from the corresponding provisions of the Income-tax Act or Sales Tax Act), the decisions under those enactments to the effect that the officer issuing the notice should come to an objective conclusion on his own and should not be guided by instructions, orders or directions of the other people would be fully applicable in the context of Section 11A of the Act. However, we express no final conclusion on this aspect as it is unnecessary for the purposes of this case as we are of opinion that the allegation in this regard is vague, indefinite and based on no material.

9. The second contention raised by Shri Madhava Reddy is that the notice refers to the period from November, 1983 to July, 1988 and that at least the period prior to 1-12-1983 is beyond the period of five years. This is no doubt true but the effect of this will not be to invalidate the notice in its entirety. At worst, the effect will be that the Department will not be entitled to collect the duty beyond a period of five years from the date of issue of the Section 11A notice. It will be open to the assessee to raise this plea in the course of the proceedings following on the issue of the show cause notice.

10. The third contention raised by Shri Madhava Reddy is that the Department could not supplement its case by the material referred to in the notice dated 7-3-1990 which is admittedly beyond a period of five years in respect of a substantial period covered by the earlier notice. We see no substance in this allegation. The proceedings under Section 11A have been initiated within the period of five years and validly covered the period from 2-12-1983 to July, 1988. The addendum, as it is called, is only a letter bringing to the notice of the assessee the further material which had come to the hands of the Department. The issue of this notice is only intended to bring the material in the hands of the Department to the notice of the assessee and give him an opportunity to rebut the same. This cannot deprive the Department of its jurisdiction to proceed to make an enquiry under the notice of 2-12-88 validly issued by it and pass appropriate orders.

11. For the reasons mentioned above we allow this appeal, set aside the order of the High Court and restore the proceedings before the Collector of Central Excise. The proceedings will continue in pursuance of the notices dated 2-12-1988 and 7-3-1990 in accordance with law. It will be open to the assessee to raise before the authorities all the contentions that are available to it in law to challenge the correctness or validity or otherwise of the notices, except only the point of limitation which we have now decided.

12. Learned Counsel also submitted that, by its letters dated 11-4-1989 and 20-3-1990, the assessee had requested the Department to supply to it some material and documents in the possession of the Department in order to effectively enable the assessee to meet the charges of the Department. We have no doubt that, before finalising the assessment proceedings, the Department will give the assessee a full opportunity to make its representation as well as to rebut the allegations which the Department seeks to rely upon.

13. The appeal is allowed. There will be no order as to costs.