

Supreme Court of India

Star Paper Mills Ltd. vs Union Of India (Uoi) And Ors. on 8 February, 1994

Equivalent citations: 1996 (83) ELT 18 SC, 1995 Supp (4) SCC 674

Bench: M Venkatachaliah, S Agrawal, S Bharucha

ORDER

1. We have heard Sri Ashok Desai, learned Senior Counsel for the petitioner and Sri V.R. Reddy learned Additional Solicitor General for the Revenue.

2. By a format order dated 23-11-1987, the High Court of Delhi remitted the matter pending before the High Court in W.P. 1173 of 1981 to the Assistant Collector. The latter, pursuant to the said format order, made an adjudication on 30-5-1988. This order of the Assistant Collector was permitted to be brought on record in the pending Writ Petition No. 1173 of 1981 and the petition proceeded with. The High Court finally disposed of the writ petition by its order dated 5-7-1993, now under appeal.

3. The contentions urged in the writ petition by the petitioner pertained to what were claimed to be eligible deductions as post-manufacturing expenses towards : (a) freight subsidies; (b) additional trade discounts; and (c) cost of special packing. The High Court declined the relief claimed under these heads of the alleged post-manufacturing costs. The High Court was of the view that these claims involved investigation of disputed questions of fact. However, the High Court, in effect, declined relief on the ground that sufficient material was not placed by the petitioner in support of the claims for deductions on the counts.

4. On a consideration of the matter, we are of the view that against the adjudication made by the Assistant Collector, the petitioner should have one effective opportunity of an appeal. The High Court could have declined to interfere with the matter under Article 226 if, in its view, the matter involved investigation of disputed facts and relegated the petitioner to the statutory records. But it rejected the claim on the ground of insufficiency of material - a situation which might be susceptible of an irreconcilability with its view that disputed questions of fact could not be investigated in these proceedings.

5. We, therefore, permit the petitioner to lodge an appeal against the order of the Assistant Collector dated 30-5-1988 with the CEGAT insofar as and confined to the three 'Heads' of the deductions for the alleged post-manufacturing expenses, namely: (a) freight subsidy; (b) additional trade discount; and (c) cost of special packing.

6. If the appeal is filed within six weeks, the CEGAT shall treat the appeal within limitation and shall consider and dispose of the same on the merits. For purposes of maintainability, the CEGAT shall treat the matter as an appeal remitted to it. In disposing of the appeal the CEGAT shall not be trammelled by any observations or judging on these issues made or recorded by the High Court in its order of 5-7-1993. The appeal shall be lodged within six weeks from today, as aforesaid. The CEGAT will dispose of the same within four months thereafter.

7. The adjudication of CEGAT shall be final.

8. The High Court having persuaded itself to the view that the petitioner had taken advantage of a stay, granted initially in the writ petition of recovery of 50 per cent of the duty, felt obliged to compensate the Revenue by an award of compound interest at 17.5 per cent from 22-5-1981, viz., the date of the stay order. While we are of the view that award of interest was justified, however as to the rate and compound ability of it, we think there should be mitigation of its rigour. We direct that simple interest shall be payable at 12 per cent per annum from 1-1-1984 on such sums as may be found due after final adjustment of all the payments is made. If the accounting results in a figure to the credit of the petitioner, it will be entitled to the appropriate refund.

9. The special leave petition is disposed of accordingly.