

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.03.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

C.M.A. NO. 828 OF 2008

M/s.SESCOT Sheet Metal Works Ltd.
No.A-1, Thiru Vi.Ka Industrial Estate
Guindy, Chennai 600 032. ... Appellant

- Vs -

1. The Customs, Excise & Service
Tax Appellate Tribunal
Shastri Bhavan Annexe
Haddows Road, Chennai.
2. The Commissioner of Central Excise
Chennai IV Commissionerate
No.690, MHU Complex
Anna Salai, Nandanam
Chennai 600 035. ... Respondents

Appeal filed under Section 35-G of the Central Excise Act against the order dated 9.5.06 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.406/2006.

For Appellant : Mr. K.Jayachandran

For Respondent2: No Appearance

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeal filed by it, the appellant/assessee is before this Court by filing the present appeal. This Court, vide order dated 6.3.08, while admitting the appeal, framed the following substantial questions of law for consideration :-

"i) Whether in the facts and circumstances of the case, the 1st respondent Tribunal is right in holding the appellant is not a "State"?

ii) Whether the doctrine of "unjust enrichment" is applicable to "State undertaking" which also managed, controlled and administered by the State Government

under the Policy and Programme evolved by the State Government?"

2. Even at the very outset, it has to be placed on record that when the matter was taken up, there is no appearance for the 1st respondent/Department. However, this Court is not inclined to adjourn the matter, as the matter pertains to the year 2008. If at all there is any change in counsel, the Department should have taken steps to ensure that a fresh counsel is allocated with the present matter instead of leaving the case to limbo. Nevertheless, on the question of law involved, this Court is proceeding to decide the issue in the absence of the respondent.

3. The facts, in a nutshell, are as hereunder :-

The appellant, a wing of the Government of Tamil Nadu, engaged in the manufacture of steel metal products, supplying their entire goods to the Tamil Nadu Civil Supplies Corporation, another undertaking of the State, claimed refund of duty paid on the ground that the goods supplied to the Tamil Nadu Civil Supplies Corporation are exempt from payment of duty under Notification 111/88-CE. The appellant filed the refund claim on 11.1.02. In support of its refund claim, the appellant also furnished Disclaimer Certificate from the Civil Supplies Corporation to the effect that the Tamil Nadu Civil Supplies Corporation will not be taking the relief of refund of duty. The Department, however, rejected the said claim on the ground of unjust enrichment and held that the decision in Mafatlal Industries Ltd. - Vs - Union of India & Ors. (1997 (89) ELT 247 (SC)) does not in any way come to the rescue of the appellant and also further held that the appellant is not a "State" as envisaged under Article 12 of the Constitution of India and, therefore, is not liable to claim refund.

4. Aggrieved against the said rejection, the appellant preferred appeal before the Commissioner of Central Excise (Appeals), who held against the appellant against which the appellant preferred appeal to the Tribunal.

5. The Tribunal, on an analysis of the entire case and considering the arguments advanced on behalf of either side held that though the Supreme Court in Mafatlal Industries case (supra) has held that the doctrine of unjust enrichment will not apply to the State, as the State represents the people of the country. The Tribunal further held that the Supreme Court, in the said decision, had in mind, an institution, which represented the people of the country and, therefore, the dictum enunciated in the said decision cannot be made applicable to a company (appellant herein) instituted by another company, viz., Tamil Nadu Civil Supplies Corporation Ltd. The Tribunal further held that the appellant, though supplying materials to the Civil Supplies Corporation, a body of the State, the role of the appellant is limited, though albeit of some significance to the common people, nevertheless, it cannot be held that the appellant represents the people in the sense understood by the Supreme Court in Mafatlal Industries case (supra) and, accordingly held that it is not in a position to equate the appellant-company to that of State as

envisaged in the Mafatlal Industries case (supra). Accordingly, the appeal was dismissed against which the present appeal has been filed by the appellant and has been admitted on the above substantial questions of law.

6. Learned counsel appearing for the appellant submits that the fact that the manufacturer and the buyer are State Government owned units have not been taken into consideration by the authorities below as well as the Tribunal. It is the further submission of the learned counsel for the appellant that the dictum laid down by the Supreme Court in Mafatlal Industries case (supra), which is binding on all authorities, has not been considered in the proper perspective. It is further submitted that the appellant, being a State Government owned unit, funded, controlled and monitored by the State Government, the doctrine of unjust enrichment will not arise, as held by the Supreme Court in Mafatlal Industries case (supra), as the appellant would, for all purposes, be a "State" as envisaged under Article 12 of the Constitution. The further argument of the learned counsel for the appellant is that the Department having accepted the fact that the appellant is a State funded, State controlled and State monitored organisation, it cannot go back and say that the appellant is not a "State" and, therefore, the concept of unjust enrichment applies to the appellant. Reliance has also been placed on the decision of this Court in Commissioner of Central Excise, Chennai - I - Vs - Superintending Engineer, TNEB (2014 (300) ELT 48 (Mad.)) and also the judgment of the Karnataka High Court in Commissioner of Central Excise, Bangalore - Vs - Karnataka State Agro Corn Products Ltd. (2006 (202) ELT 47).

7. Heard the learned counsel appearing for the appellant and perused the materials available on record as also the decisions relied on by the learned counsel for the appellant. As observed above, there is no representation for the respondent inspite of notice.

8. The definition of "State", as contemplated under Article 12 of the Constitution of India, reads as under :-

"12. Definition. - In this part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the government within the territory of India or under the control of the Government of India."

9. The meaning of "State" has been enlarged by the Supreme Court in very many decisions, more particularly by the Constitution Bench of the Supreme Court in the case of Pradeep Kumar Biswas - Vs - Indian Institute of Chemical Biology (2002 (5) SCC 111). The Supreme Court, in Zee Telefilms Ltd. - Vs - Union of India (2005 (4) SCC 649), while considering similar matter as to when an agency can be termed a "State", quoted with approval the principles laid down by the Constitution Bench in Pradeep Kumar Biswas case (supra) and held as follows :-

"21. Thereafter the larger Bench of this Court in Pradeep Kumar Biswas (supra) after discussing the various case laws laid down the following parameters for gauging whether a particular body could be termed as State for the purpose of Article 12:-

"The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

22. Above is the ratio decidendi laid down by a seven Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touch stone of the parameters laid down in Pradeep Kumar Biswas's case (supra). Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in Pradeep Kumar Biswas's case (supra) for a body to be a State under Article 12. They are:-

"(1) Principles laid down in Ajay Hasia (1981 (1) SCC 722) are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesi, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State."

10. Keeping in mind the above enunciated principles laid down by the Supreme Court, a cursory reading of the order passed by the Tribunal, reveals that the Department itself has accepted that the appellant is a State funded, State controlled and State monitored organisation supplying goods to Civil Supplies Corporation, which is another organ of the State. The order further reveals that the goods

supplied by the appellant to the Tamil Nadu Civil Supplies Corporation are used in relation to Public Distribution System. In such a backdrop, this Court is unable to understand as to the basis on which Tribunal has held that there is nothing in the nature of activity of the appellant that is relatable to "State" for the benefit of the people and, thereby, the scope of unjustly enriching themselves gets squarely attracted and that the appellant falls outside the said purview. It would not be out of context here to state that Public Distribution System is a primary concern of the State and the appellant is supplying goods to the Tamil Nadu Civil Supplies Corporation and that both the entities are State funded, State controlled and State monitored organisations and are discharging duties for the welfare of the people of the country.

11. If the finding as recorded by the Tribunal is accepted that the appellant cannot be held to be a "State" as defined under Article 12 of the Constitution, then the said finding is in direct conflict with the stand of the Department that the appellant is a State funded, State controlled and State monitored organisation. Further, as accepted by the Department, the appellant organisation is a State funded, State controlled and State monitored organisation, more particularly instituted by the Tamil Nadu Small Industries Corporation Ltd., an undertaking of the State Government, the principles as enunciated by the Supreme Court in Pradeep Kumar Biswas case (supra) as followed in Zee Telefilms case (supra) is squarely attracted to the facts of the present case and the appellant will well fall within the definition of "State".

12. In the light of the reasons stated above, this Court has no hesitation to hold that the appellant falls squarely within the definition of "State" as propounded by the Supreme Court. Accordingly, the 1st substantial question of law is answered in favour of the appellant and against the Revenue.

13. The scope of "unjust enrichment" and its applicability in a case of refund claim has been discussed in detail by the Supreme Court in Mafatlal Industries case (supra), wherein the Supreme Court has enunciated the following proposition of law and held as under :-

"99.

(iii) A claim for refund, whether made under the provisions of the Act as contemplated in Proposition (i) above or in a suit or writ petition in the situations contemplated by Proposition (ii) above, can succeed only if the petitioner/plaintiff alleges and establishes that he has not passed on the burden of duty to another person/other persons. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be. Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the above

requirement, as explained in the body of the judgment. Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State, i.e., by the people. There is no immorality or impropriety involved in such a proposition.

The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched."

14. Similar view has been taken by this Court in Commissioner of Central Excise, Chennai - I - Vs - Superintending Engineer, TNEB (2014 (300) ELT 45 (Mad.)) and also by the Karnataka High Court in Commissioner of Central Excise, Bangalore - Vs - Karnataka State Agro Corn Products Ltd., wherein the Karnataka High Court has held as under :-

"7. The argument is that the State is different from State undertakings. It cannot be forgotten that the State Government controls the Government undertakings in the matter of management, finance, administration, etc. of those governmental undertakings. Policies or programmes are also, to a certain extent, evolved by the State Government. State Government has an effective control over these undertakings and there is pervasive control by the State over them. Unless the department is able to show that the Government undertakings are totally different from all angles, it is not possible to accept the argument of 'unjust enrichment' on the part of the State undertakings."

15. In the case on hand, on a careful perusal of the records as also the orders of the authorities below, without contradiction, and as has been held above, it could be stated that the Department itself has accepted that the appellant is controlled, funded and monitored by the State. Such being the case, as has been held in Mafatlal Industries case (supra) and followed in Karnataka State Agro case (supra), the basic ingredient, which has been held against the appellant, viz., "unjust enrichment" is very much against the

principles laid down by the Supreme Court. Further the fact that the Department itself having admitted the fact that the appellant is controlled, funded and monitored by the State, it cannot be said that the appellant is unjustly enriching itself to the detriment of the people and, thereby, the "unjust enrichment" attributed to the appellant has to necessarily fail and, accordingly, the finding of the Tribunal on the abovesaid aspect deserves to be set aside. For the above reasons, the 2nd substantial question of law is answered in favour of the appellant and against the Revenue.

16. In the result, this appeal is allowed and the order passed by the Tribunal dated 9.5.06 is set aside. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Customs, Excise & Service
Tax Appellate Tribunal
Shastri Bhavan Annexe
Haddows Road, Chennai.
2. The Commissioner of Central Excise
Chennai IV Commissionerate
No.690, MHU Complex
Anna Salai, Nandanam
Chennai 600 035.
3. The Commissioner of Central Excise (Appeals)
26/1 Mahatma Gandhi Road, Chennai.
4. The Deputy Commissioner of Central Excise
Guindy Division, Chennai IV, Commissionerate,
No.690 EVR Periyar Maligai, Nandanam, Chennai.

+1 cc to Mr.K.jayachandran, Advocate,SR.15957.

pvr(co)
krd 23/4

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