

(1989) 12 MAD CK 0030
In the Madras High Court
Case No : W.A. No. 937 of 1983

A.V.D. Raj Industries

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-12-1989

Acts Referred:

Central Excises and Salt Act, 1944 — Section 36

Citation : (1993) 44 ECC 84

Hon'ble Judges : A.S. Anand, C.J.;Sathiadev, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sathiadev, J.—Petitioner in WP. No. 2011/79 is the appellant and the three respondents therein are the respondents herein.

2. Petitioner-firm had been granted Central Excise Licence in Form 14, and it commenced production of the manufacture of aluminium sheets and

utensils from January, 1967, onwards. According to the appellant, its factory has absolutely no equipment for manufacture of sheets or plates as

end products for being marketed. It had been filing classification lists, and was exempted from central excise duty from the middle of 1967. As it

was manufacturing only circles of the description given in serial No.7-B and utensils as described in S. No. 4(b) to (f) of Notification No. 43/75

dated 1.3.1975 which are totally exempt from duty, no duty has been even paid hitherto. On 28.11.75, when it had sent a consignment of 150.800

kgs. of crude aluminium through hand cart covered by delivery note Nos. 272 and 273, it was intercepted by the Central Excise Officials, and later

on, they inspected the factory and issued a show cause notice on 10.5.76, claiming that appellant is liable to pay an excise duty not only on the

quantity seized, but also on 4659.50. kgs. of aluminium sheets and plates valued at Rs. 59,308.61 illicitly cleared by it without payment of duty. A

written representation was made, and the third respondent passed an order on 25.9.1976 holding that appellant is liable to pay a penalty of Rs.

250/- and that the consignment of 150.8 kgs. of aluminium sheets seized is ordered to be confiscated, and a sum of Rs. 26,479.03 is demanded as

duty leviable on the quantity of 4659.650 kgs. of aluminium sheets and plates illicitly manufactured and cleared without payment of duty earlier, but

however, gave an option for payment of a redemption fine of Rs. 500/- and allowed release of the confiscated goods on payment of duty leviable

on them. Aggrieved against this order, an appeal was preferred to the second respondent after obtaining a certificate from a Chartered Engineer

that the machinery installed in appellant's factory are capable of manufacturing only aluminium circles. The Appellant Authority by order dated

9.12.1977 confirming the order in respect of 4659.500 kgs. of aluminium sheets and plates, but in respect of 150.800 kgs. seized from hand cart

puller, it was directed to be examined by the Chemical Examiner or an Expert in this regard, and thereafter appropriate duty to be collected

thereon. Aggrieved against that portion of the adverse order, a revision u/s 36 of Central Excises and Salt Act, 1944 was filed before the first

respondent, which confirmed the same by order dated 24.2.1979. Therefore, it had necessitated the filing of the writ petition.

3. The learned Judge held that the admission made by the licensee and his son, who was incharge of the factory is to the effect that the aluminium

blocks manufactured and cleared prior to seizure are sheets and plates, and further taking note of the fact that the licensee by his statement dated

6.12.1975 having offered to pay the excise duty for the goods removed clandestinely, found no reason to interfere with the concurrent orders of

the constituted authorities.

4. Mr. T.S. Subramaniam, learned Counsel for the appellant/writ petitioner, would submit that, any misconception entertained by a licensee about

the nature of the goods, would not confer a right under the Act to claim payment of duty, unless it be established by the authorities, that aluminium

sheets and plates had been manufactured by petitioner. Statements forcibly taking [taken?] by the authorities on 28.11.1975 and 6.12.1975 could

not have been relied upon, and that on receipt of the show cause notice, a detailed explanation having been given, there had been no proper

consideration of the merits of the matter by the concerned authorities. Colloquially in Tamil, the licensee and his son used the expression ""Ratti"" and

it had been wrongly incorporated as plate in the statements prepared in English, and therefore, and arbitrary conclusion had been arrived at, as if

appellant had manufactured aluminium sheets and plates. He relies upon the finding of the Appellate Authority that, as far as the seized goods are

concerned, its nature could be decided upon only after expert opinion is secured, and in the delivery notes in respect of that consignment, the same

words, having been used, if it is found out as aluminium crude and not aluminium sheets or plates; that the findings of the expert would equally

apply in respect of the consignments already cleared.

5. Both the licensee and his son who was incharge of the factory at the time when the inspection was made, having admitted in their statements on

28.11.75 and 6.12.75, that they have manufactured aluminium plates and sheets and removed them from the factory without payment of central

excise duty; these admissions in respect of 4,659.500 kgs. of aluminium sheets and plates will be binding upon them. Except for a vague claim

made by the licensee in his written explanation dated 23.6.76 that they were recorded by the officer to their dictation and at their instance; no

opposite material had been ever placed in support of this claims. In or about the time when the statements were made by them or even within a

reasonable time therefrom, they had never sent any protest letter to the authorities that by force or coercion, statements have been extracted from

them. The licensee was aware that in his written statement given on 6.12.75 he had agreed to pay the duty. He owned the liability, and still he had

not protested to higher authorities that any force or coercion had been practised upon him, in extracting a statement. It is only after the receipt of

the show cause notice, on advice, a passing statement had been made to this effect in the concluding para of the reply statement. No one in the

factory had filed any affidavit or at no point of time, these persons had ever asked for an opportunity, to examine any witness in support of their

claim about concern or force and in relation to these statements. Therefore, admissions made by them in these statements cannot be got over,

irrespective of whatever may be the nature of goods which were seized on 28.11.1975 and in relation to which the Appellate Authority had asked

for expert opinion. Learned Counsel for the respondents relied upon the decision in W.A. No. 224/83 wherein it was held that an admission made

before a statutory authority would be binding upon the concerned persons, as far as departmental proceedings are concerned, in spite of the fact

he had been acquitted by Criminal court, notwithstanding the retraction of the confession. Therefore, admissions made by them would be binding

insofar as these proceedings are concerned.

6. It is further strenuously pleaded by learned Counsel Mr. T.S. Subramaniam that the same expression as found in the two delivery notes having

been used in the two statements in relation to the aluminium goods, if it be found by the expert that they are only circles and not plates and sheets,

then for goods already cleared, no different approach could be made. When duplicate copies of the delivery notes for all earlier consignments were

demanding, the explanation offered was that they had been destroyed. It was found that there were two sets of delivery note books and that one

set of delivery notebook prior to serial No. 272 was found torn away without retaining any copy of the delivery notes used. In the other book

maintained for circles, delivery notes had been issued upto S. No. 271. The seized delivery notes bear Nos. 272 and 273. This shows that there is

a calculated attempt to prevent the authorities from detecting about the nature of goods manufactured in the factory. There could have been some

substance in the contention on this aspect, if the copies of the other delivery notes had been made available, and they have the same expression as

found in the seized delivery notes. Hence, the opinion of the expert in respect of the seized goods could not in any manner get over the admissions

made by the licensee and his son, at the relevant point of time about the nature of the goods manufactured and cleared already.

7. Therefore, the orders passed by the respondents concerning 4659.500 kgs. of aluminium sheets and plates are hereby confirmed and dependent

upon the opinion of the expert obtained, the duty will be payable on 150.800 kgs. of aluminium sheets. Learned Counsel for the respondents is not

in a position to state as to whether any opinion had been obtained or not. The opinion given by third respondent to pay the redemption fine of Rs.

500/- and have the goods realised on payment of duty leviable would be available to the petitioner, if the opinion is against it. Depending upon the nature of the opinion rights of parties are accordingly to be worked out only for 150.800 kgs.

8. Hence, subject to this direction, this writ appeal is dismissed. No costs.