(1982) 08 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1066 of 1976

Behari Lal Omar Rolling Mills APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 11-08-1982

Acts Referred:

Central Excise Rules, 1944 — Rule 173G, 173G(4), 173Q, 173Q(1), 9
Central Excises and Salt Act, 1944 — Section 3, 6
Constitution of India, 1950 — Article 226

Citation : (1987) 10 ECR 487 : (1983) 12 ELT 766

Hon'ble Judges : Satish Chandra, J;K.C. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This petition under Article 226 of the Constitution has been filed by M/s Behari Lal Omar Rolling Mills, Mirzapur, challenging the orders of the Assistant Collector, Central Excise, Appellate Collector, and the Union of India, dated 24-6-71, 27-9-74 and 16-1-76 respectively.

2. The petitioner is a Rolling Mills which is engaged in rolling the billets into circles and sheets under a licence granted by the Government of India u/s 6 of the Central Excises and Salt Act, 1944. Copper and copper alloy circles are excisable goods on which excise is payable u/s 3 of the aforesaid Act at the rates mentioned in Item No. 26-A of the First Schedule of the Act. Excisable goods which are covered by Item No. 26-A of the First Schedule are governed by Chapter VII-A of the Central Excise Rules 1944. This Chapter deals with removal of excisable goods on determination of duty by producers, manufacturers or private warehouse licensees.

3. Rule 173-G lays down the procedure which is to be followed by every assessee. Sub-rule (4) of Rule 173-G, with which we are concerned in the present case, reads us under :-

"(4) (a) Every assessee shall maintain such accounts, as the Collector may from time to time require of the production, manufacture, storage, delivery or disposal of the goods including the materials received for or consumed in the manufacture of excisable or other goods, the goods and materials in stock with him and duty determined and paid by him.

(b) Unless specially exempted by the Collector by order in writing, all books of" accounts maintained under Clause (a) shall be sent by him, before these are brought into use, for authentication by the proper officer in such manner and at such time as the Collector may direct."

4. On September 12, 1970, Superintendent Preventive, I.D.O. Allahabad visited M/s Behari Lal Omar Rolling Mills, Mirzapur, at about 11 A.M. On inspection, the Superintendent Preventive found that the raw materials, which were being used for manufacture of circles, had not been entered in the Stock Register. He seized 189 billets, 177 circles and 30 sheets, as they were not entered in the raw material account. He also recorded the statement of the petitioner on the spot. On 29th September, 1970, the Assistant Collector, Central Excise, Allahabad issued a notice to the petitioner with regard to the above quoted seizure on the ground of breach or contravention of Rules, 9, 173-G(4) read with Rule 173-Q of the Central Excise Rules, 1944. The relevant portion of the said notice is quoted below : -

"that 189 billets weighing 415,700 Kgs, 177 circles weighing 383,100 Kgs. and 30 sheets weighing 136.900 Kgs. cumulatively weighing 935.700 Kgs. were not entered in the Raw Material account of the party. 177 circles was in semi-processed state which was completed before the Seizing Officer and 30 sheets had already been rolled. Hepce the above billets circles and sheets were seized as there was no entry in the accounts for contravention of Rules 9, 173-G(4) read with 173-Q of the Central Excise Rules, 1944."

5. In response to the show cause notice, M/s. Behari Lal Omar Rolling Mills filed explanation before the Assistant Collector, Central Excise. On 24th June, 1971, the Assistant Collector Central Excise held that the petitioner had since not entered the raw materials account of billets received by him before they were put in the furnace for rolling, the seized goods were liable to be confiscated to the Government under Rule 173-Q of the Central Excise Rules, 1944. The Assistant Collector held that the seized goods could be redeemed oh payment of Rs. 4,000/- and on furnishing a personal penalty of Rs. 250/-. Against the aforesaid order of the Assistant Collector the petitioner went up in appeal, before the Appellate Collector, Allahabad, which was also dismissed on 27th September, 1974. The order passed by the Appellate Collector was challenged by means of a revision to the Central Government. The revision was rejected on 16-1-1976. Being aggrieved, the petitioner has filed the present writ.

6. The first argument made before us by the Learned Counsel for the petitioner was that as Rule 173-G(4) did not require the raw materials received to be

entered simultaneously on receipt, the petitioner had not contravened Rule 173-Q, hence, the goods were not liable to be seized and confiscated. His submission was that the account of raw material was required to be maintained date wise, hence, the petitioner could not be held guilty of breach of the aforesaid Rule for not entering the raw materials in the morning at 11 A.M. on the 12th September, 1970.

7. Under Rule 173-G(4) every assessee is required to maintain accounts of the production, manufacture, storage, delivery of disposal of goods including the materials received for or consumed in the manufacture of excisable or other goods. The purpose of maintaining account of raw materials is obviously for checking of evasion of excise duty. A manufacturer is required under this rule to enter into a complete and full account of raw materials received by him before starting the manufacture. In the instant case, at 11 A.M. when the petitioner factory was visited, the manufacture had already started. The Central Excise Officer found 30 completely rolled sheets and 177 circles under process of being rolled. The raw materials out of which these two items were produced had admittedly not been entered in the Stock Register. In the statement made before the Superintendent Preventive, Behari Lal, giving the reasons for not having entered the raw materials in the accounts, stated that because of the rains, his son, who looked after the factory, had been delayed and, therefore, the entry of goods received could not be made. This statement was not believed by the Excise authorities. The Assistant Collector and the Appellate Commissioner did not accept the statement of Behari Lal that as Lavkush Kumar was detained due to heavy rains on the date of seizure, the raw materials were not entered in the accounts. The petitioner did not state before the Preventive Staff that the goods were not entered as the accounts used to be maintained date wise. This explanation has been given for the first time before the High Court in the writ petition. From the statement of Behari Lal before the Preventive Staff, it was clear that if Lavkush Kumar would have come to the shop, the raw materials would have been entered in the accounts. The theory of Lavkush Kumar inability to reach the shop due to rains had been found to be false. Since the explanation offered by the petitioner for not entering the raw materials before manufacture, has not been found to be correct, the only conclusion possible to be arrived at with respect to 177 circles and 30 sheets was that the petitioner had not entered them for evading excise duty. The statement of Behari Lal is in fact an admission of the fact that the raw materials used to be entered in the accounts books before starting manufacture. This statement was not of such character as where a party making it had no knowledge of the facts declared.

8. Counsel for the petitioner next urged that since the Collector had not issued instructions under Rule 173-G(4) laying down the manner in which the, accounts had to be maintained, the petitioner''s not entering the raw materials before putting them in the furnace, could not be a ground for holding him responsible for breach of the aforesaid provision. If the Rule 173-G(4) is read, there is no doubt left that entry of raw materials is required to be made before start of

manufacture. The object of entering the raw materials is to check the evasion of excise duty. This could be achieved only when the raw materials is mentioned in the stock register before manufacture was started. That being the position, the petitioner had committed the breach of Sub-rule (4) of Rule 173-G and that the goods were liable to be confiscated under Rule 173-Q.

9. Next argument of the petitioner''s learned counsel was that there was no requirement of law either under the Central Excise Act or under the Rules laying down that the entries of raw materials should be posted forthwith on its receipt, hence the petitioner had not committed breach of any rule or instruction. For this argument, counsel also took support from Annexure ''A'' to the writ petition which is a copy of the form IV dealing with the "account of raw materials and components" framed under Rule 173-G. We do not find any merit in this submission. For reasonably interpreting Rule 173-G(4), we have to keep in mind the basic purpose for which the account of raw materials was required to be maintained. That basic object should not be lost sight of by interpreting the aforesaid rule. The intention behind Rule 173-G(4) can be given affect to only when the requirement of entering raw materials before manufacture is started. In the impugned order, the Assistant Collector has noted that the fact of not entering the raw materials in the accounts of billets received by the petitioner before putting them in the furnace for rolling was not without motive. This indicated with an oblique intention that the petitioner did not enter the raw materials in the accounts.

10. Next submission made by the learned counsel for the petitioner was about 189 billets which had not been used for manufacturing purpose when the petitioner''s factory was visited by the Preventive Staff. The argument made by the petitioner''s learned counsel was that as 189 billets had not been used into the process of rolling, the petitioner had not violated Rule 173-G(4). The order of the Excise Authorities in respect of 189 billets was illegal. It may be a fact that 189 billets had not actually been consumed but that by itself is not sufficient for holding that the orders of the Excise authorities were illegal. These billets had also been put in along with other raw materials which had been consumed for the manufacture of circles and sheets. Only on account of arrival of the Preventive Staff that the petitioner could not successfully do so. According to Rule 173-G(4), no goods could be consumed or disposed of prior to accounting. The Excise Authorities found that 189 billets had not been entered in the register with an ulterior motive. In these circumstances, the authorities could not be said to have committed any error for holding the petitioner guilty of breach of Rule 173-G(4) in respect of 189 billets as well. The relevant portion of Rule 173-Q(1)(d) reads as under ;

"Rule 173-Q,.-Confiscation and Penalty.-(1) If any manufacturer, producer or licensee of a warehouse, -

(a) removes any excisable goods in contravention of any of the provisions of these rules ; or (b)...

(c)...

(d) contravenes any of the provisions of these rules with intent to evade payment of duty.

then, all, such goods shall be liable to confiscation and the manufacturer, producer or licensee of the warehouse, as the case may be, shall be liable to a penalty not exceeding three times the value of the excisable goods in respect of which any contravention of the nature referred to in Clause (a) or Clause (b) or Clause (c) or Clause (d) has been committed."

From the above, it would appear that even in a case where any breach of the rule is committed with intent to evade payment of excise, the goods in respect of which a breach is committed, shall be liable to confiscation. The intention of a party can be proved from circumstances and direct evidence. In the instant case, the excise authorities found from the circumstantial evidence that with the intent to evade payment of excise duty that 189 billets had not been entered in the accounts.

11. The intention of evading excise flows from the fact of deliberately not showing the raw materials in the accounts. The intention is presumed to cause that which is the natural consequence of something consciously done or omitted. Accordingly, we are unable to hold that impugned orders of the Excise Authorities are erroneous or suffer from an error requiring to be interfered with.

12. In the result, the writ petition fails and is dismissed. No order as to costs.

