
(1994) 02 MP CK 0034
In the Madhya Pradesh High Court
Case No : M.P. No. 1053 of 1993

Bhimraj Rathore	Vs	APPELLANT
Collector of Central Ex. and Cus.		RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q, 209A
Constitution of India, 1950 — Article 226

Citation : (1994) 48 ECC 63 : (1994) ECR 121 : (1994) 74 ELT 810

Hon'ble Judges : V.D. Gyani, J; M.W. Deo, J

Bench : Division Bench

Advocate : Chafekar and V.K. Jain, for the Appellant; B.G. Neema, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J

1. The petitioners, who are transporters, by this petition under Article 226 of the Constitution challenge the show cause notices filed as Ann. "A" and "B" to the petition and further pray for quashing the same. They also pray for quashing respondents' action of seizure of goods and vehicle bearing registration No. CIF 889. The petitioners further submitted that the respondents' action is illegal and invalid and the bonds and Bank Guarantee furnished be also set aside.

2. Shri Chafekar, Senior Advocate, with Shri Jain appearing for the petitioners, contended that the petitioners are neither manufacturers nor even remotely directly or indirectly involved in manufacturing activities. As such they are beyond the purview of the Central Excise Act and Rules made thereunder. The petitioner No. 1 is the owner of the vehicle CIF 889 and carries on business of transporting; while the petitioner No. 2 is a driver employed by the petitioner No. 1; the petitioner No. 3 is merely a helper working for the petitioner No. 4, who is a trader. The petitioners 1, 2 and 3 were served by the respondents with a show cause notice (Ann. "A") on 24-2-1993 and the petitioner No. 4 was served with

show cause notice (Ann. "B") dated 11-2-1993. The allegations as made in the show cause notices are reproduced in para 3 of the petition. The gist of the show cause notices is that the petitioners have abetted M/s. National Steel Industries Ltd., Ghatabillod, in clearing zinc ingots falling under Chapter Heading No. 7901 of Central Excise Tariff Act, 1985 without payment of duty amounting to Rs. 39,914/-. The show cause notice further charges that the petitioners "knew and had reason to believe that the said goods were liable for confiscation" under the provisions of the Central Excise Act (for short "the Act") and Rules made thereunder. Hence, they were liable for penalty under Rule 209 A of the Rules.

3. It was contended by the petitioners' counsel that the show cause notices are not prima facie maintainable and the petitioners cannot be compelled to call upon to reply to the allegations for which they are not legally accountable; particularly under the provisions of a taxing statute. It was argued by the learned counsel for the Petitioners that it is well established interpretation of statutes that the provisions imposing liability must be strictly construed. According to him it was abuse of power and process of law. There was no material available on record to sustain the impugned notices.

4. It is an undisputed position that the petitioners removed the goods from the factory on delivery of documents including gate pass. If there was any deficiency or discrepancy in the contents as transporters of goods, they were not accountable or answerable for such discrepancy nor can they be called upon to explain any such deficiency in the documents. The seizure vehicle was wholly unjustifiable in face of the fact that the goods were removed under the authority and proper documentation.

5. It is not in dispute that the liability to excise duty and prepare proper documents as required under the law is that of the manufacturer. The allegation is made in the notices (Ann."A" and "B") is to the effect that it was the manufacturer who had cleared the goods without proper gate pass. The petitioners are charged with abetment. The show cause notices itself reveal that the manufacturer had paid full duty for 5 M.T. but the gate-pass was only for 1 M.T. Thus, so far as payment of excise duty is concerned, there was no evasion even on the part of the manufacturer. At best it could be a case of technical default only. It is also alleged that the goods seized by the Excise department were not zinc waste and scrap but zinc ingots for which higher duty was payable.

6. The only question which falls for decision in this petition is whether on the basis of material on record the transporter, driver and helper could be attributable with knowledge or could they be presumed to have the requisite knowledge or reason to believe that the goods they were transporting were liable to be confiscated. It is clear from the record that the petitioners Nos. 3 and 4 had contracted to purchase 5 M.T. duty paid zinc scrap. The petitioner No. 1 who is the owner of the vehicle and a mere transporter cannot be expected to know technical nature of the goods which he was required to transport nor was he as a matter of fact present at the time of loading.

7. The petitioner No. 2 who is an illiterate driver, similarly not expected to check the documents in their minds the legal details and technicalities. It could be a case of default on the part of the manufacturer in preparing the documents. But on that account it would be too much to infer that the owner, driver of the vehicle and buyer of the goods who was purchasing duty paid goods had abetted the manufacturer in releasing the goods without proper cover of documents

8. Learned counsel for the Petitioners placing reliance on a decision of the Bombay High Court in B.R. Sule Vs. Union of India, submitted that the present decision applies on all force to the case at hand.

9. Shri Neema, learned standing counsel appearing for the Union of India on the other hand inviting attention to Rule 173Q of the Rules and placing reliance on a decision in Grasim Industries Ltd. Vs. Asstt. Collector, Collector contended that the notices issued and the action taken by the respondents were quite proper.

10. The case relied upon by the respondents is clearly distinguishable. From the material available on record and in the view of the statements made by the petitioners, it cannot be said that there is material enough for respondents to form an opinion that the petitioners were in any manner guilty of any violation of law or rules or they had any reason to believe that the goods they were transporting were liable to be confiscated.

11. Following the decision of the Bombay High Court (supra) this petition deserves to be allowed and is accordingly allowed with costs. The show cause notice (Ann/A" and "B") issued by the respondents stand quashed. Consequently the seizure memos Ann. "C" and "D" and the action taken by the respondents for seizure is declared to be illegal. The bonds and security furnished stand discharged. Counsel's fee Rs. 2500/-, if certified.