

(1992) 05 CAL CK 0026
In the Calcutta High Court
Case No : C.R. No. 1563 (W) of 1984

Birla Jute and Industries Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-05-1992

Acts Referred:

Central Excise Rules, 1944 — Rule 10

Citation : (1992) 61 ELT 437

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : R.N. Bajoria, S.K. Bagaria and C.M. Ghorawat, for the Appellant; Prantosh Mukherjee, for the Respondent

Judgement

Suhas Chandra Sen, J.—The petitioner has challenged two show cause notices, one dated 27th June, 1980 and the other dated 30th November, 1982. The first show cause notice is in respect of the period from 1-4-1973 to 11-8-1977 and the second show cause notice is for the period from 24-4-1980 to 31-7-1989. The period of limitation as laid down in Rule 10 of Central Excise Rules is "Recovery of duties not levied or not paid or short levied or not paid in full or erroneously refunded or any duty assessed has not been paid in full, the proper officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid, or which has been short-levied, or to whom the refund has erroneously been made, or which has not been paid in full, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that -

(a) where any duty has not been levied or paid, has been short-levied or has not been paid in full, by reason of fraud, collusion or any wilful mis-statement or suppression of facts by such person or his agent, or

(b) where any person or his agent, contravenes any of the provisions of these

rules with intent to evade payment of duty and has not paid the duty in full, or

(c) where any duty has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by such person or his agent, the provisions of this sub-section shall, in any of the cases referred to above, have effect as if for the words "six months", the words "five years" were substituted."

2. In the instant case there is no allegation that there is any fraud, collusion or any wilful mis-statement or suppression of fact by the petitioner or his agent. There is also no allegation that the petitioner or his agent contravened any of the provisions of these rules with intent to evade payment of duty and has not paid the duty in full. Mr. Mukherjee contended that the petitioner had removed the goods on the basis of self-removal scheme. The Excise authority did not have any occasion to exercise any judgment as regards the procedure adopted by the petitioner. However, the show cause notice has not alleged any suppression of fact by the petitioner or any wrong doing by the petitioner. It appears from the correspondence between the petitioner and the Customs Authorities that the show cause notice was issued on the basis of a notification issued by the Central Government exempting man-made fibres and tops falling under sub-item (1) of Item 10 of the First Schedule to the Central Excises and Salt Act, 1944 from the whole of the duty on condition that such fibres and tops were manufactured with wastes- falling under Item No. 18 of the First Schedule. The Excise Officers have come into conclusion that since exemptions have been granted by the Notification dated 1-3-1978, a duty was leviable on these goods before 1-3-1978. In other words, an inference of law has been drawn by the Excise Officers. Mr. Bajoria on behalf of the petitioner has contended that this is a clear case of a view of law which have been taken contrary to the view taken earlier. This cannot be a ground for reopening the case beyond the period of six months from the relevant date.

3. The second point urged is that in any event the view taken by Excise Authority is wrong. He has contended that no appeal was preferred by the department to the Supreme Court against the order of the Tribunal according to his information. I need not further go into this matter, because, in my view, the petitioner is entitled to succeed procedure of limitation. There is no allegation of any suppression of fact by the petitioner. In fact, there is no such allegation in the show cause notice. In that view of the matter the impugned show cause notice is quashed. The writ petition is disposed of finally as above.

4. Let a Xerox copy of the order be given to the learned Advocate for the petitioner on usual undertaking to apply for and obtain certified copy of the same.