

(1990) 08 MAD CK 0097

In the Madras High Court

Case No : Writ Petition No. 9538 of 1982

Carborundum Universal Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-08-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 223A
Central Excises and Salt Act, 1944 — Section 11A

Citation : (1994) 53 ECR 211 : (1992) 58 ELT 403

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Mr. E.S. Govindan, for the Appellant; Mr. P. Narasimhan, Adv and Sr. C.G.S.C, for the Respondent

Judgement

Raju, J.—The above writ petition has been filed praying for a writ of Certiorarified Mandamus to call for and quash the proceedings of the third respondent dated 31-5-1982 and consequently directing to refund the amount of Rs. 43,542.69 which was adjusted against the claim made by the said respondent.

2. The writ petitioners are manufacturers of Coated Abrasives and Grinding wheels. The writ petitioners submit that they manufacture several small items and in the process it was inevitable due to the nature and volume of goods handled for certain shortages to occur every year. After annual stock-taking, a statement was filed before the authorities and they were aware of the said shortages. It was pointed out by the petitioner that shortages would be more in the smaller and bulk items, since it depended upon the nature of the goods and the quantity of goods produced and handled. In the year 1980, the Superintendent, Central Excise raised certain demands for the years 1973-1979, and the petitioners submitted their reply that the shortages not exceeding 2%-3% of the annual clearances were marginal and that the claim made by the department was also vague and arbitrary.

3. Thereupon, the third respondent issued a show cause notice dated

22-11-1980 for the shortages noticed during the years 1973-1979. The petitioner submitted a reply on 22-12-1980 and objected to the proposals both on merits as well as on the point of limitation. The third respondent passed the impugned proceedings rejecting the plea raised by the petitioner in their explanation referred to above. The third respondent held the petitioner to be liable to pay a sum of Rs. 7,36,296.10 and after adjusting the sum of Rs. 43,542.69 which was due to the company, a demand was raised for the balance of Rs. 6,92,753.41. It is at this stage, the writ petitioner has filed the above petition.

4. At the time of hearing, learned counsel for the writ petitioner raised the following grounds of attack. (a) The impugned order is barred by limitation u/s 11A of the Act since the show cause notice dated 22-11-1980 itself was issued more than 6 months after the relevant date and that even in respect of proceeding under Rule 223-A of the Rules, the limitation u/s 11A will apply; (b) In the absence of any finding that the goods were surreptitiously removed, the Department will have no right to levy and recover duty on mere shortages; and (c) Having regard to the nature of the business, the percentage of shortage found is very marginal and does not call for any penal levy. The order of the third respondent is vitiated by arbitrary and capricious exercise of power.

5. Learned Standing Counsel for Central Government appearing for the respondents submitted that the action of the Department is not vitiated by any of the infirmities as pleaded by the learned counsel for the petitioner, that Section 11A and Rule 223-A deal with two different and independent situations, that only Rule 223-A, which does not provide for any period of limitation, alone applies to the case on hand and even on the very admissions of shortages by the writ petitioner, their liability to pay duty stood accepted and consequently the writ petition is liable to be dismissed.

6. On a careful consideration of the contention raised by the learned counsel on either side, I am of the view that the plea of limitation raised by the writ petitioner does not merit acceptance. In my view, the provisions of Section 11A of the Act will be attracted only in cases where the goods manufactured were removed or cleared and as a consequence there had been a resultant non-levy or non-payment or short levy or short payment or in a case of erroneous refund. So far as Rule 223A is concerned, it empowers the Collector as often as he may deem it necessary and proper and at least once in every year to cause the stock of excisable goods remaining in factory, warehouse or store-room licensed or approved for the storage be weighed, measured, counted or otherwise ascertain in the presence of the proper officer and if the quantity so ascertained is less than the quantity which ought to be found in such premises and unless the keeper thereof explains the deficiency to the satisfaction of the proper officer, the manufacturer shall be liable, subject to due allowances for waste by evaporation or other natural causes as may be found to be reasonable and in accordance with any instructions of CBE & C, to pay the full amount of duty chargeable on such goods as are found deficient in addition to a penalty upto Rs. 2,000/-. The

liability under the provisions of Rule 223A, therefore, gets attracted automatically on ascertainment of the result of stock-taking or stock-verification. The incidence of levy is on the inability of the keeper of the warehouse or premises of storage to duly account for the stocks and in a sense it constitutes a penal assessment rather than deal with the method of levy and collection contemplated u/s 11A of the Act. In my opinion, to such a situation as contemplated under Rule 223A of the Rules, the limitation prescribed u/s 11A will have no application as they cover and deal with altogether different situations and serve different purpose and object. It may also be stated that the validity of Rule 223A as such was not challenged in these proceedings before me. It is not for the courts to import period of limitation by implication where there is none. Consequently, the submission raised on the applicability of Section 11A and the limitation stipulated therein is rejected.

7. With reference to the plea of the learned counsel for the petitioner regarding the quantum of shortages arrived at and deficiencies found, the stand of the respondents does not appear to be either reasonable or just or in accordance with law. The counsel for the respondents submitted a statement which works out with meticulous care the percentage of shortage found in the present as well as the percentage of shortages condoned by the Central Government exercising its statutory powers of revision in its proceedings Order No. 172/88 (F.No. 195/15/128/87.CX. V) dated 27-4-1988 in respect of the very writ petitioner for the years 1980 to 1982 in identical situation and circumstances. After going through the order and the statement prepared and filed after service on the respondents, I find that the ratio adopted by the Central Government as the statutory Revisional Authority for the years 1980 to 1982 equally and squarely applies to the case on hand in respect of the earlier years referred to above. The relevant directions of the revisional authority in this regard may be usefully extracted below :-

"As regards merits of the case, Government find that the petitioners produce a variety of products. In the grinding wheel alone, there are more than 30,000 individual products. Government, therefore, observe that in handling the variety and volume of products of such magnitude, some omissions and commissions were possible especially in wares of smaller dimensions. Government find from the stock-taking reports of various products for the year 1980, 1981 and 1982 that there have been gains in certain products and shortages in others. Viewed in this background, Government observe that some shortages are bound to occur. In the circumstances, Government condone the shortages due to natural causes.

Government further observe that the method followed by the Department while raising the demand on the basis of highest value was arbitrary and hence not proper. Government, therefore, direct where on the basis of loss of individual products, computation of the duty payable are not ascertainable because of stock-taking of range of products together instead of each and every individual product then for demand for duty on loss the value of the product in that product-group

which has been highest in manufacture and clearance in the relevant years of stock-taking shall be adopted for the purpose of demand of duty."

8. The learned counsel for the respondents was not able to either seriously dispute the said position nor challenge the utility and the applicability of the ratio laid down by the Revisional Authority for the period in question in these proceedings. There can not be two different or double standards in respect of the very case of the petitioner which are similar and identical in all respects excepting the fact that they relate to different and separate periods. Consequently, the principles adopted and the reasons assigned and the quantification of shortages arrived as well as the duty determined as payable under the impugned proceedings are not only found to be unreasonable but appears to be arbitrary. There appears to be a mechanical approach and lack of objective and reasonable consideration of the matter on merits resulting in grave injustice. The impugned proceedings are, therefore, liable to be set aside and the respondents are bound to apply the very same standards, ratio and principles laid down by the Central Government as the revisional authority, even in respect of the period covered by the present writ petition.

9. Consequently, the writ petition is allowed, the impugned proceedings are quashed and the third respondent is directed to consider the matter once again in the light of the directions contained in this order and in accordance with the principles laid down by the Central Government, as statutory revisional authority, in the order dated 27-4-1988, as referred to above. But, in the circumstances, there will be no order as to costs.