

(2000) 08 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9447 of 2000

Century Nf Castings

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-08-2000

Acts Referred:

Central Excise Rules, 1944 — Rule 29, 57, 57G
Constitution of India, 1950 — Article 226

Citation : (2000) 72 ECC 39 : (2000) ECR 609 : (2000) 122 ELT 359 : (2000) 4 RCR(Civil) 145

Hon'ble Judges : Swatanter Kumar, J;Nirmal Singh, J

Bench : Division Bench

Advocate : Mr. O.P. Goyal and Mr. Parmod Goyal, for the Appellant;

Judgement

Shri Swatanter Kumar, J.—The petitioner, a company duly incorporated under the provisions of the Companies Act, is carrying on the business of manufacture of Aluminium and Zinc based Alloy Ingots, with its registered office at Calcutta. The petitioner is registered under the Central Excise Act. The petitioner had purchased Aluminium Scrap from M/s Multi Metal Udyog and Silicon metal from M/s R. R. Metal during the period 1.10.1999 to 31.3.2000. According to the petitioner he had paid the custom duty as also countervailing duty in lieu of Central Excise Duty thereon which amounted to Rs. 4,02,28,287.00. According to the petitioner he had paid the duty payable u/s 29 of the Central Excise Duty Rules, 1944. After availing of modvat credit of the duty Central Excise paid on the inputs, the petitioner claims to have paid further Central Excise duty amounting to Rs. 106250611/- on the finished goods during the said period.

2. On 24.4.2000 a notice to show cause was issued by the office of the Superintendent of Central Excise Range No. 9, Faridabad. It was stated in the notice that the petitioner appears to have contravened the provisions of Rule 57G of the Rules as they availed of Modvat Credit on the basis of the bills of entry which were not in their name but were in the name of M/s Multi Metal Udyog,

Faridabad. The petitioners were called upon to submit reply to the show cause notice within 30 days of the receipt of this notice. The department proposed to disallow the modvat credit amount and recover the same in accordance with law while further imposing a penalty u/s 57I read with Rule 173Q of the said rules. The details of the documents were mentioned in the notice and necessary documents were annexed to the show cause notice.

3. The petitioner submitted his reply on 22.5.2000 and thereafter additional reply on 25.5.2000 to the show cause notice justifying that the facility of modvat credit was available and has rightly been availed of by the company and as such the show cause notice should be dropped. Resultantly, there arises no question of imposing the penalty as proposed. A vague objection was also raised with regard to the very jurisdiction of the concerned officer to issue notice to show cause on the basis of the facts averred in the reply. The petitioner in the writ petition, thus, prays that the show cause notice dated 24.4.2000 be quashed at this stage itself.

4. Learned counsel for the petitioner relied upon the judgments of the Supreme Court in the cases of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, ; East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, ; Union of India (UOI) and Others Vs. Aravali Min. and Chem. (India) (P) Ltd. etc. etc., and Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani and another 1983 ELT 1327 (SC) : 1983 ECR 2151D (SC) : ECR C Cus 142 SC to contend that this Court has the jurisdiction to quash the show cause notice at this stage itself. We are unable to see any merit in the contention raised on behalf of the petitioner. In response to show cause notice dated 24.4.2000 the petitioner himself submitted a reply and conceded to the jurisdiction of the officer concerned. In fact in the first reply to the show cause notice the petitioner did not even raise such plea. It cannot be argued in the present case that the officer concerned is acting without jurisdiction or there is lack of inherent jurisdiction in the action taken. The petitioner had claimed a relief/benefit in relation to modvat credit and consequential deduction of central excise. Whether such benefit is permissible under the rules or not has to be determined necessarily by the authority specified to do so. Petitioner cannot be stated to be a judge in his own cause, to say that no authority acting under the rules has jurisdiction to issue the notice to show cause. Even if we assume that there is substance or any merit in the argument raised on behalf of the petitioner even then we see no prejudice being caused to the petitioners as they will always be at liberty to challenge the order passed by the said authority in furtherance to the notice to show cause.

5. The cases relied upon by the learned counsel for the petitioner hardly have any bearing on the facts of the present case. In those cases the Hon'ble Apex Court came to a conclusion on interpretation of the relevant laws that the executive authority was acting totally without jurisdiction. In the case of East India Commercial Company Ltd. (supra) the Court was concerned with a notice

issued for confiscation of goods in terms of a licence to import granted under the Imports and Excise Control Act. Their Lordships said that a writ would lie against show cause notice as it was not a breach of the statute of the rules, but allegedly one of the terms of the license. Certainly that is not the case here. We are unable to hold that in issuing the show cause notice under the excise rules disallowing a particular benefit, which the petitioner had taken under the same rules, that the officer has proceeded without jurisdiction or in excess of jurisdiction or contrary to law i.e. the Excise Act and the Rules. This is a matter which squarely falls within the realm of the authorities concerned and they necessarily must answer the question raised by the petitioners in reply to the show cause notice. We do not find any merit in this writ petition and dismiss the same at this stage as premature. However, there shall be no order as to costs.