

(1997) 04 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4930 of 1997

Charan Kamal Board and Paper Mills (P) Ltd.

APPELLANT

Vs

Asstt. C.C.E.

RESPONDENT

Date of Decision : 09-04-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 173C, 198
Central Excises and Salt Act, 1944 — Section 35EE
Constitution of India, 1950 — Article 226

Citation : (1998) 59 ECC 247 : (1997) 93 ELT 335

Hon'ble Judges : N.C. Khichi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Puneet Bali, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This is a petition to quash the orders dated 23-6-1988 and 28-10-1988 passed by the Collector, Central Excise, Chandigarh and the order dated 27-2-1991 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (for short "the CEGAT").

2. The petitioner is engaged in the manufacture of paper for which it has been granted licence under the Central Excise and Salt Act, 1944 and the rules framed thereunder.

3. On 18-11-1985, the Central Excise preventive staff made a surprise visit to the factory of the petitioner at Amritsar. During this visit the staff found certain documents showing clandestine removal of 87.900 tonnes of duplex paper valued at Rs. 6,15,300/-. The checking party found that on 19-10-1985 the petitioner had written to the Directorate General of Technical Development, New Delhi that its production during the period from July, 1983 to December, 1983 was 68.91 tonnes, during January, 1984 to December, 1984 it was 195.33 tonnes and during January, 1985 to June, 1985 it was 203.10 tonnes. It was also found that the entries made in the RG 1 register contained corresponding entries for the

first two periods but production for the period (January, 1985 to June, 1985) was shown as 143.100 tonnes in the RG 1 register as against 203.10 tonnes mentioned in the letter dated 19-10-1985 which was supported by a certificate issued by the Chartered Accountant, Shri Rajesh Mehra. Thereafter the department collected certain material and issued show cause notice requiring the petitioner to appear on 28-11-1985. After considering the reply submitted by the petitioner, the Assistant Collector, Central Excise Division, Amritsar held that the petitioner was guilty of clandestine removal of 87 tonnes of duplex paper and thereby evading central excise amounting to . Rs. 53,451.32. The Assistant Excise Collector also held the petitioner guilty of violating the provisions of Rule 198 of the Central Excise Rules, 1944. He, therefore, gave notice to the petitioner to show cause as to why central excise duty and penalty be not levied upon the petitioner. After considering the reply dated 9-1-1987 filed by the petitioner and hearing its counsel, the Collector, Central Excise passed the order Annexure-P.3 dated 23-6-1988 and confirmed the demand raised by the Assistant Collector. By another order dated 28-10-1988, the Collector, Central Excise, Chandigarh imposed penalty of Rs. 15,000/- on the petitioner under Rule 173C of the Rules of 1944. Feeling aggrieved by the order passed by the Collector, the petitioner preferred appeals before the CEGAT both of which came to be dismissed by order dated 27-2-1991. After about five years of dismissal of its appeals, the petitioner filed revision petition before the Central Government on 21-3-1996. That petition has been returned to the petitioner by the Government of India vide letter Annexure-P.6, dated 16-7-1996.

4. After hearing the learned counsel for the petitioner at some length, we are of the opinion that the writ deserves to be dismissed on the ground of delay and laches and also on the ground that impugned orders do not suffer from any error of law.

5. A look at the record of the writ petition shows that it was presented before this Court on 20th March, 1997. Therefore, as against the orders passed by the Collector on 23-6-1988 and 28-10-1988, it is delayed by more than 8 years. Even if we were to consider the issue of delay in the context of the order dated 27-2-1991 passed by the Tribunal by invoking the theory of merger, the writ petition has been filed after almost six years. The petitioner has not offered any explanation for this long delay of six years except saying that it had filed the revision petition before the Central Government which was returned on 16th July, 1996. In our considered view the act of the petitioner to file revision petition on 21-3-1996 is hardly sufficient to explain the delay of almost six years in the filing of the writ petition for quashing the orders passed in the years 1988 and 1991. In fact the petitioner's attempt to persuade the Central Government to interfere with the order passed by the Collector was wholly unwarranted because under proviso to Section 35EE "the Act of 1944", the Central Government does not have the power to entertain revision petition against the order passed by the CEGAT. That apart on a revision petition filed by the petitioner on 21-3-1996, the Central Government could not have interfered with the order passed by the

CEGAT on 27-2-1991. Therefore, we do not find any substance in the plea of the petitioner that the delay of almost six years in the filing of the writ petition should be ignored.

6. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, , the Supreme Court has held that delay in the filing of the writ petition is one of the factors which must be kept in view by the High Court when it exercises extra-ordinary jurisdiction under Article 226 and a petition filed after the expiry of the period of limitation prescribed for filing a civil suit should ordinarily be treated as belated. A somewhat similar view has been expressed in *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, .

7. We, therefore, hold that the writ petition suffers from, laches and on . that ground alone it is liable to be dismissed.

8. On the merits of the case also we do not find any substance in the plea of the petitioner that the order passed by the Collector, Central Excise and the CEGAT are erroneous in law: Learned counsel argued that independent evidence was available to hold that the petitioner indulged in clandestine removal of the papers and the letter written by the petitioner to the Director General of Technical Development or the certificate given by the Chartered Accountant could not have been made the basis for levy of excise duty. Shri Bali argued that it was the duty of the department to adduce direct evidence to prove that the petitioner had made clandestine removal of the papers and as no such evidence was produced, the Collector had no jurisdiction to confirm the demand and the Tribunal has seriously erred in upholding the order of the Collector. A look at the orders Annexures-P.3, P.4 and P.5 shows that for the years 1983 and 1984 the figures furnished by the petitioner to the Director General of Technical Development tallied with the entries made in the RG 1 register. Even the figures given in the certificate of the Chartered Accountant tallied with the entries made in the RG 1 register. However, for the year 1985 the department discovered substantial difference between the entries made in the RG 1 register and the figures contained in the letter dated 19-10-1985 written by the petitioner to the Director General of Technical Development and the certificate issued by the Chartered Accountant.

9. No doubt the figures of production of goods in stock which may be supplied to different authorities may differ from the figures recorded for excise purposes but when such a difference is noticed it is open to the authorities to make probe into the matter and call upon the manufacturer to explain the discrepancy. This is precisely what has happened in the present case. When the inspecting party found apparent discrepancy in the entries made in the RG-I register and the information supplied by the petitioner to the Director General of Technical Development, notice was given to the petitioner to explain the reason for this discrepancy. However, the petitioner did nothing more than to submit that the figures were supplied on different basis. That explanation has not been accepted by the Collector as well as the CEGAT and, in our opinion, there is no reason for

interference by this Court with the view taken by the Collector and the CEGAT. In its order the Tribunal has correctly appreciated the legal as well as the factual position as would appear from the following observations made by the Administrative Member :-

"I am of the view that the figures of production of goods in stock supplied to another office/organisation could differ from figures for excise purposes, in certain circumstances, depending upon the basis on which the figure were required to be worked out and supplied and the purpose for which they were supplied. Thus for example, the quantity in stock from the bankers point of view and that is why the figures for excise purposes often differ from figure supplied to the banks for taking loans or advances. Similarly the figures supplied to the DGTD could theoretically be different depending upon the basis on which they were required to be worked out. However, once such a difference is noticed by the department it could certainly look into the matter and call an explanation; and the licensee was required to explain the discrepancy. The acceptance or otherwise the explanation would then depend upon the plausibility thereof. And if the licensee was not able to give satisfactory explanation it would be legitimate for the department to draw an adverse inference.

In the instance case the appellant had stated that he has filed the returns before DGTD (showing the production figures) for the purpose of taking quota of coal. Since the figures were different from RG 1 figures it was for the licensee to indicate the basis and explain the difference satisfactorily.

Merely stating that the figures were supplied on different basis, is however, not sufficient and full facts are required to be disclosed. Further more the learned adjudicating officer has observed, inter alia, that the figures in the RG-1 differ even from the figures indicated in the CA's certificate and again the appellants have not rendered any satisfactory explanation for the difference. Similarly, in respect of the raw material account satisfactory explanation is not forthcoming.

Admittedly, they had not accounted for the quantity in question in the records prescribed for raw material accounts and the arguments that it has not been disposed of to other parties, even if true does not absolve them from the responsibility of maintaining proper accounts under the Central Excise Rules.

Further, it is interesting to observe that in respect of the years 1983-84 the same figure had been reported to the DGTD and were certified by the C A as had been entered into the RG 1. This is apparent from the facts narrated in the show cause notice at para-3 and in the order - in - original at para 1 (brief " facts) and not contradicted by the assessee. This shows that both for excise as well as DGTD purpose the same basis was adopted-by the assessee himself and so figures were recorded and reported for the year 1983-84. Therefore, it . would be reasonable to infer that the same basis continued to be adopted, for the year 1985 (unless shown otherwise). The difference in the RG 1 figures and the figures reported to DGTD (for the year January 1985 to June 1985) assumes

significance in this context; and in the absence of a plausible explanation could lead only to one conclusion that RG 1 record was not being maintained correctly and properly as mentioned by learned SDR. In the above circumstances, the figures reported to DGTD from January 1985 to June 1985 of 231.00 tons could reasonably be taken to represent the quantity produced during this period and consequently the department was justified in raising the demand for the difference between this figure and the RG 1 figure that is 87.900 tons.

Looking at the case on the whole, we observe that neither the raw material account nor the RG 1 account had been maintained properly. Hence, the department was justified in concluding that the differential quantity was produced and removed without accountal and without payment of duty in violation of the Central Excise Law and Rules.

As such the duty in question was demandable. Further as suppression and misstatement of facts was obvious in the above circumstances, therefore, the department was justified in invoking the extended period, hold that the demand was time barred and the learned Additional Collector has rightly confirmed the demand and asked the party to pay the same. Hence, I see no reason to interfere with the first adjudication order of 23-6-1988.

In so far as the Second matter relating to the 1/49/89-NRB is concerned. I observed that the learned counsel is correct in pointing out that it relates to imposition of penalty with reference to the same goods and for the same period as that of the first adjudication order dated 23-6-1988. However, in this respect I notice that the learned SDR has drawn out attention to the fact that the first order relates only to the question of liability to duty and demand thereof and the order regarding liability to penalty if any was reserved.

Since in the show cause notice, the sections relating as demand of duty as well as penal provisions had been invoked. In the normal course it could be expected that both these aspects will be covered by the same order. However, there was no bar in law to treat the duty aspect and the penalty aspect separately."

10. We have extracted the portion of the order of the Tribunal in order to show that the learned Tribunal has properly examined the issue and has correctly applied the principles of law and it cannot be said that the order passed by the Tribunal suffers from error of law apparent on the face of the

11. For the reasons mentioned above, the writ petition is dismissed.