
(1996) 05 AHC CK 0137

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 970 of 1984

Charan Metal Corporation

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 23-05-1996

Acts Referred:

Citation : (1998) 98 ELT 588

Hon'ble Judges : D.S. Sinha, J;B.M. Lal, J

Bench : Division Bench

Advocate : R.N. Vajpai, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Shri R.N. Vajpai, learned Counsel for the petitioners. None appears for the respondents.

2. It is 1984 petition. This petition is directed against the impugned orders dated 22-8-1984, 28-9-1979 and 28-6-1979 contained in annexures 11, 8 and 7 to the petition passed by the Respondents No. 1, 2 and 3 respectively.

3. The short facts leading to the petition are as under :-

The petitioner M/s. Charan Metal Corporation is carrying on business of manufacturing steel furniture since 1965 with the aid of power and at times when it is found necessary due to urgency of supply of materials firm also purchases and gets fabricated steel furnitures to cope with demand orders. The firm supplies steel furniture on rate contract. On information received, the Preventive Officers of the Central Excise Division, Kanpur visited the premises of the factory on 10-9-1975 and they observed on the basis of perusal of records and examination of certain persons that the manufacturing of steel furniture was with the use of power and that the alleged manufacturing carried out by S.K. Steel Furniture was also really of M/s. Charan Metal Corporation. The inquiry was, therefore held and on this basis order was passed for confiscation of seized

goods of various items of steel furniture subject to payment of redemption fines and also imposed a penalty Rs. 50,000/- and demanded duty on the manufacture of steel furniture valued at Rs. 7,56,987.62 cleared during the period from 1-4-1973 to 10-9-1975. On an appeal by the appellants to the Central Board of Excise and Customs, the Board passed an order dated 28-9-1979 upholding the orders passed by the Respondent No. 1 the Collector, Central Excise, Kanpur. Against this order this petition is filed.

4. The contention raised by the learned Counsel for the petitioners is that the impugned order of respondents vitiate the principle of natural justice inasmuch as that no opportunity was given to the petitioners even on demand to cross-examine the persons namely S/Shri Bindeshwari Pd., P.N. Khanna, H.K. Maheswari and T.B. Tewari whose statements were recorded in absence of petitioners and used against them, therefore, the principle of Audi Alteram Partem is violated.

5. The specific plea has also been raised in this regard in paragraph 26 of the writ petition. However, nowhere in the writ petition it is mentioned as to whether petitioners were informed that the statements of the above referred witnesses will be recorded on particular dates, even petitioners have not made statement on oath before this Court. What was the sufficient cause which prevented petitioners to appear before the authority concerned when the statements of above referred witnesses were recorded.

6. No doubt without giving notice to the parties if the statements are used and order is passed the same vitiates the proceedings as same cannot be used against the persons concerned. However, the situation in the facts narrated by the petitioners is quite different, even on being asked as to whether any notice was received or not was not replied and this fact has also not been stated in the writ petition. Learned Counsel for the petitioners could also not give any satisfactory reply. This being so, we are of the considered opinion that the plea raised by the learned Counsel for the petitioners that statements of the petitioners are not supported by any documentary evidence and even no oral statement is made on oath. Therefore, in absence of such material on record it will not be appropriate for this Court at this state to accept the plea that the statements of person were recorded behind the back of the petitioners. This being so, the impugned orders referred to above, in our opinion, do not suffer from any legal infirmity warranting interference by this Court.

7. The petition is accordingly dismissed. The interim order dated 10th July, 1985 stands vacated. The authorities concerned are directed to proceed further in accordance with law.