

(1988) 01 MAD CK 0022
In the Madras High Court

C.N. Paper Industries Madras

APPELLANT

Vs

Collector of Central Excise and Others

RESPONDENT

Date of Decision : 01-01-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1), 9
Central Excises and Salt Act, 1944 — Section 11A

Citation : (1988) 17 ECC 166 : (1988) 18 ECR 398 : (1988) 35 ELT 268

Hon'ble Judges : Swamikannu, J

Bench : Single Bench

Judgement

1. This Writ Petition coming on for hearing on this day, upon perusing the petition and the affidavit filed in support thereof the order of the High

Court dated 27 - 4 - 1981 and made herein, and the counter and reply affidavits filed herein and the records relating to the order in O.C. No.

396/81 dated 31 - 3 - 1981 on the file of the 3rd respondent comprised in the return of the respondents herein to the Writ made by the High

Court, and upon hearing the arguments of Mrs. Nalini Chidambaram, Advocate for the petitioner, and of Mr. T. Somasundaram Additional

Central Government Standing Counsel on behalf of the Respondents, the Court made the following Order :-

2. The main point raised on behalf of the petitioner is that the very notice that had been sent by the Department calling for explanation as to why

excise duty should not be imposed on the paper that is manufactured by the petitioner's concern, is exhibiting errors on the very face of the record

and as such the said notice has to be quashed. It is also submitted by the learned Counsel for the petitioner that if at all there is any reason to be

offered to the Department, it could only be with respect to a period of six months

prior to the date of issue of notice and not with respect to the manufacture of the paper for a period of two years. The grievance of the petitioner is that when other manufacturers of the same kind of paper are not assessed, issuing a show cause notice to the petitioner alone is certainly a discrimination which will be sufficient ground to quash the notice itself. According to the learned Counsel for the petitioner, there is total lack of jurisdiction to issue a notice on the petitioner especially when the notice itself mentioned that the paper that is manufactured by the petitioner is only white tissue paper. In this regard the contents of the Notification No. 68/76 dated 16 - 3 - 1976 are relied on by the learned Counsel for the petitioner which reads as follows :-

Notification No. 68/76 dated 16 -3 - 1976 as amended :- In exercise of the powers conferred by sub - rule (1) of Rule 8 of the Central Excise

Rules, 1944, the Central Government hereby exempts goods of the description specified in Column (2) of the Table hereto annexed and falling

under item No. 17 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of duty of excise leviable thereon as

is in excess of the duty specified and subject to the conditions laid down in the corresponding entries in the columns (3) and (4) respectively of the said table.

S. No. Description Rate of Conditions

Duty

1.

2.

3.

3A. Following varieties of paper If it is proved to

namely :- the satisfaction of

the proper officer

(i) Crepe paper. Nil that the appropriate

(ii) Converted types of paper Nil duty of excise or

commonly known as imitation additional duty

flint paper or imitation leatherette paper, or Section 2A of the imitation plastic coated Indian Tariff Act, paper, or by any other name, 1934 (32 of 1934) as obtained by one side of paper the case may be has being subjected to printing of already been paid in colour with or without design, respect of the paper irrespective of the fact whether in their manufacture. or not such paper is subsequently varnished or glazed by chemicals or embossed and falling under sub - item (2) of the aforesaid item No. 17.

(iii)

(iv)

4.

5.

6.

Explanation :-

(a)

(b)

(Notification No. 68/76 -CE dated 16 - 3 - 1976 as amended)

Item No. 17 - Paper and Paper Board.

17. Paper and paper boards, all sorts

(including paste board - mills

board strawboard cardboard and

corrugated board) in or in relation to the manufacture of which

any process is ordinarily carried

on with the aid of power)

(1) Uncoated and coated printing 25%

and writing paper (other than Ad valorem
poster paper)

(1) (2) (3) (4)

(2) Paperboard and all other 40%
kinds of paper (including Ad valorem
paper or paper boards which
have been subjected to various
treatments such as coating,
impregnating, corrugation,
creping and design printing
not elsewhere specified.

Replying on this notification, it is contended that converted types of papers are
exempt from levy and the paper that is produced by the petitioner is
only with respect of one side of the paper in that it is subjected to printing of
colour with or without design. It is not subsequently varnished or
glazed by chemical or embossed. On the other hand it is treated once and for all
one side with chemicals and as such under serial No. 3A
described in the Table incorporated in the Notification No. 68/76 it is exempt, and
that the rate of duty is `nil". According to the learned counsel
for the petitioner, now the department wants to impose tax having properly
understood the manner in which the white tissue paper is treated and
converted as contemplated under the types of papers which are exempt by the
notification incorporated above.

3. Mr. T. Somasundaram, Additional Central Government Standing Counsel, for
the respondents would submit that there is no question of
quashing the notice which is legally issued to the petitioner herein and that it
cannot be said that there was any lack of jurisdiction on the part of the
issuing authorities since Section 11A of Central Excises and Salt Act, 1944 gives
sufficient power to the authorities to issue notice. Section 11A of
the Act reads as follows :-

Section 11A : Recovery of duties not levied or not paid or short - levied or short paid or erroneously refunded

(1) When any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, a Central Excise 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 short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount

specified in the notice :

Provided that where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of

fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made

thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub - section, shall have effect, as if for the

words ""six months"", the words ""five years"" were substituted.

Explanation :- Where the service of the notice is stayed by an order of a Court, the period of such stay shall be excluded in computing the

aforesaid period of six months or five years, as the case may be.

(2) The Assistant Collector of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under

sub - section (1) determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and

thereupon such person shall pay the amount so determined.

(3) For the purposes of this section -

(i) ""refund"" includes rebate of duty of excise on excisable goods exported out of India or an excisable materials used in the manufacture of goods

which are exported out of India:

(ii) ""relevant date"" means -

(a) in the case of excisable goods on which duty of excise has not been levied or paid or has been short levied or short paid -

(A) Where under the rules made under this Act a monthly, return, showing particulars of the duty paid on the excisable goods removed during the

months to which the said return relates, is to be filed by a manufacturer or

producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed;

(B) Where no monthly return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(C) In any other case, the date on which the duty is to be paid under this Act or the rules made thereunder;

(b) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(c) in a case of excisable goods on which duty of excise has been erroneously refunded the date of such refund.

4. A careful reading of both the provisions of Rule 9 and Section 11A of the Central Excises and Salt Act, 1944, clearly shows that sufficient

power is vested with the Collector to issue notice with respect to any period wherein the authorities concerned discovered that there had been

omission to collect the tax as per law after issuing notice.

5. It is pointed out by the learned counsel for the petitioner that the contents of the notice do not disclose that there had been sufficient reasons for

issuing the notice and this by itself would be sufficient to quash the notice. In this regard the decision in *Seshasayee Paper and Boards Limited*,

Salem v. The Assistant Collector, Central Excise, Salem 1979 E.L.T. 238 is relied on by the learned counsel for the petitioner. It is further

submitted by the learned Counsel for the petitioner that it is too late in the day now after 7 years from the date of admission of the writ petition, to

call upon the petitioner to give explanation to the notice that had been issued and this would certainly cause prejudice to the petitioner. In this

regard the learned counsel for the petitioner refers to the decision in *South India Flour Mills Private Ltd. v. The Regional Director, Employees*

State Insurance Corporation, Madras 1970 (J) MJJ. 110 and *Yarn and Cloth Processing Centre, Erode v. The Assistant Collector of Central*

Excise, Erode 1979 E.L.T. 175.

6. Mr. T.S. Somasundaram, on behalf of the respondents submits that the department is well within its right to issue a notice under the provisions

of Section 11A and that it cannot be said that Rule 9 has been violated.

7. Mrs. Nalini Chidambaram, learned Counsel for the petitioner had taken me through several correspondence that had ensued between the petitioner and the department. This Court is now not called upon to give any opinion regarding the kind of material utilised or the manner in which the process of manufacture is indulged with respect to the papers, that are now actually subjected to in the show cause notice, that had been sent by the department. Now it is for the petitioner to place evidence before the relevant authorities. Even at the stage of issue of show cause notice, it cannot be said that there is evidence to quash the notice. The documents placed before Court are only correspondence. The authorities have to look into the papers which are now alleged to have been manufactured out of tissue papers and they have to satisfy themselves whether the end produce comes well within the Notification No. 68/76 dated 16 - 3 - 1976.

8. "Evidence" does not mean "communications" that are available even prior to the issue of the notice or subsequent to the issue of notice as contemplated under Rule 9 or Section 11A of the Act. Evidence is one which is furnished in a proper enquiry conducted as per the provisions of the Act by the authorities concerned. In this case no such enquiry has been conducted by the authorities. Only a show cause notice had been issued. It is the case of the department that the recovery of duty has not been resorted to. It is not that any allegation is made against the petitioner that there had been any clandestine removal. Under these circumstances it cannot be said that no opportunity is given to the petitioner to put forth his case that the product that is manufactured by the petitioner comes under exempted category and that such exemption has in fact been given to other manufacturers. A submission is made to the effect that the petitioner would be driven to close down the very manufacturing unit since the Act contemplates heavy deposit of amount before actually taking part in the proceedings that may be conducted by the authorities. The law is common to all whether it is for the assessing authority or for the person who is sought to be assessed and as such we are governed by the procedures that are available in the Central Excises and Salt Act, 1944 regarding assessment of an assessee or imposing of tax. In the instant case, the remedy is available to the petitioner by giving adequate explanation as to how the notice that is now sought to be quashed contains materials which are

erroneous on the very face of it. It is not as if that the petitioner is prevented from pointing out the errors found in the show - cause notice in the reply to the show cause notice. There are the petitioner can very well state in their reply notice the contents of the affidavit accompanying this writ petition. Hence no writ at this stage can be issued. The petitioner herein is given all opportunities even though it is seven years since the date of admission of the writ petition, to give details regarding the manufacturing process and to contend that the variety of paper that is subjected to conversion as well as the end product that emerges out of the white tissue paper as the converted type of paper do come within the exemption as per the Serial No. 3A(ii). The petitioner herein is also permitted to file the reply to the show cause notice. The time that had lapsed in between, namely 7 years does not stand in the way of the department to consider afresh the contentions raised in the reply to be filed by the petitioner within two months from today.

9. So far as the contention regarding the confinement of the period of six months just prior to the issue of notice is concerned, this court finds no substance in it. It is needless to say that the authorities concerned are the persons who are to assess as to the commencement of the date of manufacturing paper and the period for which the imposition of excise duty is to be made. Under these circumstances, the writ petition is dismissed with liberty for the petitioner to file the reply to the show cause notice within two months from today and raise whatever points the petitioner wants to raise by way of reply to the show cause notice. If the petitioner wants further time to file the reply, the petitioner has to apply to the authorities concerned. Since seven years had passed, this court is constrained to direct the authorities to dispose of this proceedings as early as possible. Under the circumstances, there is no order as to costs.