(1989) 12 AHC CK 0006

In the Allahabad High Court

Case No : Civil Appeal No''s. 2151-52 (NM) 86

Collector APPELLANT

Vs

Decent Dyeing Co. RESPONDENT

Date of Decision : 07-12-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 155, 160
Constitution of India, 1950 — Article 226

Citation : (1990) 45 ELT 235

Hon'ble Judges : K.C. Agarwal, Acting C.J.;R.K. Gulati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ petition under Article 226 of the Constitution has been filed by Shri Abdul Hafeez for quashing the demand notices of duty in form :-

(i) DD-2 No. 152747 dated 23-5-1968, amount Rs. 2,941.20

(ii) DD-2 No. 153252 dated 30-9-1970, amount Rs. 2,679.40

(iii) DD-2 No. 153253 dated 20-9-1970, amount Rs. 3,006.20

The total amount demanded from the petitioner was Rs. 8,626.80 plus 10 per cent collection charges.

2. The petitioner''s observation is that without having given a show-cause notice before issuing the demand notices, the Central Excise Authorities did not have the power to issue the demand notices.

3. A counter affidavit has been filed on behalf of the Central Excise Department justifying the demand on the ground that under Rule 160 of the Central Excise Rules the petitioner could not have removed the dutiable goods kept in the warehouse without the permission of the Excise Authorities and as the petitioner was guilty of having committed a breach of the said rule, the Central Excise Authorities were entitled to recover the duty from the petitioner.

4. We have gone through the writ petition as well as through the relevant rules of the Central Excise Rules. We are unable to find out any rule which required giving an opportunity prior to issuance of demand notices. The operation of the Rules 155 and 160 is automatic. As the petitioner did not obtain permission of the requisite authority before removing the tobacco, he was liable to pay the amount demanded from him.

5. The writ petition has no merit and it is dismissed.

