

(1994) 02 SC CK 0047

In the Supreme Court Of India

Case No : Civil Appeal No. 4829 of 1991

Collector of Central Excise, Patna and Others

APPELLANT

Vs

I.T.C. Limited and Another

RESPONDENT

Date of Decision : 17-02-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 9B(5)

Citation : (1994) 71 ELT 324 : (1998) 4 JT 452 : (1995) 2 SCC 38

Hon'ble Judges : B.P. Jeevan Reddy, J;B. L. Hansaria, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Having heard the counsel for both sides, we are of the opinion that it is not really necessary for us to go deep into the matter.

2. The respondent No. 1 is I.T.C. Limited. It appears, searches were made by the Director General of Inspection (Customs and Central Excise) in the premises of the first respondent on the basis of which he issued the proceedings called "Order-in-Original No. 1/1986 dated 10th April, 1986". In this order, he enunciated the principles applying which the amount of duty payable by the first respondent should be determined. It is stated that the assessing authority determined the duty at Rs. 1,12,76,000.04 by its order dated 17-7-1986. Later on, the assessing authority served another demand for additional excise duty amounting Rs. 8,29,10,883.25. This was done without giving an opportunity to the first respondent to meet the grounds upon which the duty was enhanced or revised, as the case may be. The respondent filed a writ petition in the High Court questioning the said enhanced demand which has been allowed by the High Court with the observation that before enhancing the duty payable by the first respondent, the assessing authority shall give a notice calling upon the first respondent to show cause why it should not be made liable for paying the enhanced duty. It is this order which is challenged in this appeal.

3. Sri Bajpai, learned Counsel for the Revenue says that the direction of the High Court to issue a show cause notice was not called for, inasmuch as the order dated July 17, 1986 was only a provisional one. He submits that Sub-rule (5) or Rule 9B of the Central Excise Rules does not provide for a fresh opportunity or a fresh show cause notice being given before determining the final duty. Hence, says the counsel, no opportunity or show cause notice was called for before serving the final demand.

4. Sri Sorabjee, learned Counsel appearing for the first respondent says - and which submission is recorded herewith - that the first respondent does not challenge the correctness and validity of the order in Original No. 1/86 dated April 10, 1986 passed by Shri B.K. Aggarwal, Director General of Inspection (Customs and Central Excise). The counsel, however, says that it should be open to the first respondent to question the interpretation placed upon the said order by the Revenue. It is made clear that while the interpretation of the said order shall be open in the proceedings taken herein, its correctness or its validity shall not be questioned by the first respondent. So far as the directions made by the High Court are concerned, we are substantially in agreement with it. Before the first respondent is made liable for higher or enhanced duty, it must be told on what grounds it is sought to be made liable for additional duty and it must be given an opportunity of meeting those grounds. This is the minimum requirement of the principle of natural justice which must be read into Sub-rule (5) of Rule 9B, wherever called for.

5. We are also told that pursuant to the judgment of the High Court, proceedings have already been initiated, a show cause notice served upon the first respondent and that the proceedings are now in progress. The said proceedings shall now be concluded expeditiously without waiting for orders of the Tribunal or any Court. The appeal is accordingly disposed of. It is obvious that against the order passed by the assessing authority, the aggrieved party shall have the remedies prescribed by law. No. costs.