

(2006) 04 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : CEA No. 17 of 2004

Commissioner of Central Excise

APPELLANT

Vs

Azad Engg. Works

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Citation : (2006) 202 ELT 423

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Daya Chaudhary, Assistant Solicitor General of India and Manjeet Singh Guglani, for the Appellant; Sudeep Singh and Vikrant Kacria, for the Respondent

Final Decision : Allowed

Judgement

This order will dispose of CEA Nos. 17, 27 to 43, 49 of 2005 and 14 and 112 to 119 of 2005. Facts have been taken from CEA No. 17 of 2004.

1. This appeal has been preferred by the revenue against the order of Customs, Excise and Service Tax Appellate Tribunal, New Delhi, quashing the order of levy of duty and imposition of penalty. Though, several questions of law have been posed in the memo of appeal, learned counsel for the appellant mainly pressed the question of perversity in the findings of the Tribunal.

2. Case of the appellant is that on 6-3-1998, the Central Excise Officers visited the factory premises of respondent M/s. Azad Engineering Works, Bathinda and recovered incriminating documents i.e. private note books, duplicate set of invoices, unaccounted purchase bills/sale bills private ledgers etc. In the course of verification, the respondent organised a mob which obstructed the functioning of the department and which led to lodging of FIR No. 60 dated 6-3-1998 in Civil Lines, Police Station, Bathinda against S/Shri Sewak Ram Bhola, Sarup Chand, partner of respondent-assessee and Madan Lal Kapoor, President Punjab Pradesh Beopar Mandal, Bathinda. On scrutiny of record, it was revealed that the

assessee was engaged in manufacture of ISI/non-ISI marked diesel engines and was registered with the Bureau of Indian Standards, having brand names Power Master, Power Man and Super Shakti. The assessee was also selling ready-made diesel engines, generating sets and alternators purchased from other manufacturers. The diesel engines were mostly sold by the assessee through dealers to farmers which were financed by Primary Agricultural Development Banks. Diesel Generating sets and alternators were mostly sold to individual customers directly. From the data collected from the banks, it was found that the figures of sale in the books of account of the assessee were inaccurate and far below the actual sales. Year-wise break up of sale of diesel engines financed through various PAD Banks as against the sale of diesel engines as per the invoices issued by the noticee, was found to be as under:

														Year
Sale of Diesel Engines Sale of Die as per invoices issued sel engines by the part														
No.	1								Sale	as	Per	list		
Dealers Others Total Provided by PAD Banks														
														1994-95 170
72	242	339	1995-96	281	78	359	490	1996-97	107	89	194	289	1997-98	107
88	195	428												

3. The respondent was summoned u/s 14 of the Act on 23-3-1998, 1-4-1998, 24-4-1998, 20-5-1998, 5-6-1998, 29-10-1998, 16-12-1998, 29-12-1998, 17-2-1999 and 10-6-1999, inter alia, to explain the facts and figures of his unaccounted purchase of inputs, clandestine manufacture of excisable products and sale thereof but he did not comply with the summons.

4. Accordingly, a Show Cause Notice dated 16-6-1999 was issued to the assessee for levying excise duty amounting to Rs. 22,78,004/- on goods valued at Rs. 1,82,34,371/- removed/cleared clandestinely without payment of duty and consequently for levy of penalty. Show cause notices were also issued to the dealers to whom engines were sold in clandestinely manner. In the show cause notice, reference was made to the statements of persons who purchased the engines.

5. The assessee gave reply dated 21-8-1999, inter alia, to the effect that the dealers had merely issued invoices and not effected sales as such; bank officers financed the engines without actual sales; value of clearance did not exceed limit of Rs. 3 crores which was covered by SSI exemption; copies of documents collected from the bank were not supplied; the assessee could not be fastened with the liability of sale by dealers unless the engines were recovered from the assessee; opportunity to cross examine bank officers and dealers was required to be given; income tax department had conducted enquiry in which the farmers stated that they simply arranged bills for securing loans.

6. The assessee was given personal hearing. The adjudicating authority passed the order dated 27-11-2002 raising the demand of duty of Rs. 4,00,096/-with

equal amount of penalty besides interest. It was held that clandestine manufacture and removal of goods was proved, inter alia, from the statements of Duli Chand, who purchased the engine from the assessee and got the same financed and description given in the sale invoice was different. While in the sale invoice furnished by the assessee, the description was one diesel engine loose kit 10 HP double cylinder, description in the original invoice was one diesel engine 10 HP double cylinder. Similarly, there were statements of Madan Lal, Ashok Kumar, Kishan Chand, another Madan Lal, Gurmit Singh, Ashok Kumar Bhardwaj, another Ashok Kumar, Krishan Kumar, Murari Lal, Sat Pal Singh, Naresh Gopal, Om Parkash, Vinod, S.C. Aggarwal, Suresh Kumar, Sat Pal, Vinod Kumar, Prithi Ram, Rajinder Kumar, another Rajinder Kumar, Amarjit, Ashwani Kumar, Mak-han Lal etc.

7. On appeal, the Tribunal set aside the order of adjudicating authority, while observing as under:

- (i) Copies of documents collected from the bank were not supplied to the assessee.
- (ii) Diesel engines bearing brand names of the assessee were not seized.
- (iii) Statements of farmers who got the engines financed were not recorded.
- (iv) Dealers did not admit purchase of engines from the assessee.
- (v) No excess or unaccounted diesel engines were recovered from the premises of the assessee.
- (vi) Income tax authorities did not find any truth in the similar allegations.
- (vii) No verification was done by the Insurance company while insuring the engines for being financed.
- (viii) There was no evidence of sale by the assessee.
- (ix) Statements of the individuals were not subjected to cross-examination.
- (x) No inference could be drawn from description in two invoices being different.
- (xi) There was no evidence that the assessee exceeded the SSI exemption limit.

8. Learned counsel for the appellant submitted that the order of the Tribunal was perverse in as much as the same was based on misreading of record.

9. It is pointed out that statements of the farmers and other persons who purchased engines from the assessee were available on record, which could not be ignored merely on the ground that they were not subjected to cross examination; even if documents of the bank were not supplied, clandestine manufacture and removal stood proved by independent material; statements of farmers were duly recorded, which have been ignored, though the same are

mentioned in the show cause notice as well as in the adjudication order; there being sufficient material against the assessee, merely because the unaccounted goods were not found in the premises, it could not be a ground to set aside the order of adjudication; decision of Income Tax authorities could not be taken to be conclusive; absence of cross examination did not make a difference. It was submitted, in the alternative, that if at all, any prejudice was caused or there was denial of adequate opportunity, the matter could have been remanded for a fresh decision after allowing inspection of documents or allowing cross-examination of witnesses.

10. We have considered rival submissions and perused the record.

11. We are satisfied that substantial question of law to the effect "whether the order of the Tribunal is perverse?" arises for consideration.

12. Order of adjudicating authority contains material as discussed in paras 3.5 to 3.31 of its order, which has been duly analysed in paras 3.32 to 3.41. The Tribunal has not adverted to the entire material on which the order of adjudicating authority is based. It was, inter alia, observed that copies of documents collected from the Bank were not supplied to the assessee. Cross-examination of witnesses was not permitted to the assessee. Assuming it is so, the Tribunal ought to have remanded the matter for such further opportunity being given to the assessee as may be called for. These observations could not be held to be sufficient for quashing the order of the adjudicating authority and closing the matter finally. Subject to opportunity being given to the assessee, the material relied upon by the adjudicating authority could well be a valid basis for levying excise duty or penalty. In these circumstances, the Tribunal instead of setting aside the order and closing the matter, ought to have remanded the matter for a fresh order being passed.

13. We are of the view that reasons as summarised above at Sr. Nos. (ii), (iv), (v), (vi) and (vii) were not enough to reject the case of the revenue while reasons at Sr. Nos. (iii), (viii) and (xi) are against record and reason at Sr. No. (x) is without any legal basis.

14. Reasons at Sr. Nos. (i) and (ix) with regard to principles of natural justice could not be sufficient for closing the matter finally, as observed herein above.

15. It is well settled that no rigid rule can be laid down as to when principles of natural justice apply and what is their scope and extent. The said rule contain principles of fair play. Interference with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon" ble the Supreme Court in K.L. Tripathi Vs. State Bank of India and Others, .

16. Constitution Bench of the Hon" ble Supreme Court considered the question of effect of violation of natural justice by not furnishing a copy of B. Karunakar etc. Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . It was held that

direction for reinstatement with back wages in all cases will amount to "unnatural expansion of natural justice", which is antithetical to justice. In each case, it ought to be examined whether any prejudice was caused and even after holding that prejudice was caused, order of punishment should not be set aside but the management should be given liberty to proceed with the matter further after furnishing copy of enquiry report. Relevant observations at Page 1092-93 are:

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result

in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

17. In view of above discussion, we allow these appeals, set aside the order of the Tribunal and remand the matter for a fresh decision to the adjudicating authority. It is not disputed by the learned counsel for the parties that Commissioner, Central Excise, Ludhiana is the adjudicating authority at present. The parties are directed to appear before the said authority for further proceedings on May 29, 2006 or any other date given by the authority for the purpose.