(1987) 03 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 893 of 1977

Durga Rolling Mills — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 25-03-1987

Acts Referred:

Central Excise Rules, 1944 — Rule 173G, 173G(4), 173G(A), 173Q, 226
Central Excises and Salt Act, 1944 — Section 8

Citation : (1987) 29 ELT 512

Hon'ble Judges : S.K. Mukherjee, J;B.D. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—M/s. Durga Rolling Mills - a registered partnership firm - the petitioner in writ petition No. 893 of 1977 is engaged in rolling billets into circles on the basis of licence granted by the Central Government in accordance with Section 8 of the Central Excises and Salt Act, 1944. On February 6, 1972, the preventive officers, Central Excise, visited the mills at about 5.45 a.m. when the Mills was in operation and noticed that certain billets and circles had not been entered in the register maintained to account for the raw material. A notice to show cause was issued to the petitioner on June 17, 1972 by the Assistant Collector (Excise) Central Excise. The petitioner objected. On November 21, 1972 the objections raised by the petitioner were overruled by the Deputy Collector, Central Excise, who imposed penalty and directed confiscation apart from payment of fine and duty. Appeal filed against this order was dismissed by the Appellate Collector on January 22, 1976. The matter was taken in revision by the petitioner thereafter to the Central Government which dismissed the same on December 16, 1976.

2. In Writ Petition No. 826 of 1977 (Radhey Shyam Rolling Mills v. Union of India and Ors.) the petitioner company, engaged in rolling billets into circles, and raided on September 1, 1974, following which a show cause notice was issued on

5th October, 1974 by the Assistant Collector, Central Excise. The petitioner furnished reply. Under order dated April 11, 1975, made by the Assistant Collector, Central Excise, confiscation was directed of 140 billets under Rule 173Q of the Central Excise Rules, 1944 or contravention of Rule 173G(A) a fine of Rs. 175/- was also imposed. An appeal filed against this order came to be dismissed on January 30, 1976 and the revision filed to the Central Government was dismissed on December 4, 1976.

3. Contention raised by the learned counsel for the petitioners in these two petitioner briefly is that even if the everments made upon facts from the other side are acceptual, that may not be said to be a breach made out of the relevant statutory provisions. Under Rule 173G(4) read with Rules 53 and 226 of the Central Excise Rules, 1944, every assessee shall maintain accounts of production, manufacture, store, delivery or disposal of goods, including the materials received for or consumed in the manufacture of excisable or other goods, the goods and materials in stock with him and the duty determined and paid by him and shall keep the books of accounts and registers at all time ready for inspection of the officers. Form IV framed under Rule 173-G is meant to record ''Account of raw material and components". This Form consists of 14 columns. Of these columns 14 is meant for a signature of the assessee or his agent. Column 13 related to remarks; Column 12 refers to quantity of goods other than excisable goods manufactured; Column 11 relates to quantity of excisable goods manufactured and Column 10 pertains to closing balance, while the opening balance is to be denoted in Column 2, Column 1 refers to the date. A perusal of the various columns in this Form IV depicts clearly that the entries are not necessary to be made as and when the raw materials or components are received. Closing balance may be drawn at the end of the working hours; the entries proceed date-wise; Columns 1 to 9 may be filled in before the closing balance is drawn in Column 10. It would not, therefore, be correct to maintain that the raw materials and components must be registered in this Form IV as soon as they are received or obtained in the mill premises. Since there is no requirement apparently under the Rules to make the respective entries for receipt of raw-material or components no sooner than these are received or obtained at the mill premises, it may not be claimed legitimately that there was a breach of the statutory rules in this behalf. It is not said for the respondents that on the date immediately preceding that on which the seizure took place the relevant entries had not been duly made in Form IV and, therefore, the liability may not be said to have been incurred by the petitioners under the Central Excise Rules, 1944, in this respect.

4. The petitions for these reasons succeed and are allowed. The orders dated November 21, 1972, January 22, 1976 and December 22, 1976 (Annexures C, B and F in writ petition No. 893 of 1977) and orders dated April 11, 1975, January 30, 1976 and December 4, 1976 (Annexures C, D and F in Writ Petition No. 826 of 1977) are set aside. There will be no order as to costs.

