(1996) 10 KL CK 0046

In the High Court Of Kerala

Case No : O.P. No. 6462 of 1987-T

G. Radhakrishnan APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 25-10-1996

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35K

Citation : (2002) 144 ELT 299

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : K. Jagadeeschandran Nair, for the Appellant; K.L. Joseph, C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Patnaik, J.—The petitioner is the proprietor of Raly Rubbers, a manufacturing unit of tread rubber at Aranmula. He has sought for a direction to quash Ext. P1 show cause notice by which he was called upon to show cause why a sum of Rs. 46,01,326.60 shall not be recovered by the Central Excise. He has also prayed for a direction to quash Ext. P4, the scheme of the advance rewards payable to the excise department officials at whose instance the duty evasion is detected.

2. On 23-7-1996, the Superintendent of Central Excise, Cochin conducted a search of the factory. Statements were obtained from him as well as from the workers of the factory. Thereafter the impugned show cause notice was issued. It is contended that the statements were taken under threat and the search was made in violation of the provisions of Section 18 of the Central Excise and Salt Act, 1944 and Section 165 of the Code of Criminal Procedure. He has also contended that, in the meantime, the Collector of Excise has decided to issue advance rewards to all the concerned officers by his order dated 27-2-1987 amounting to Rs. 1,94,000/-. Under this scheme, advance reward is paid to the officers as an incentive immediately on seizure or on issuing show cause notice. A percentage of anticipated imposition of duty as a result of the detection of the

evasion of duty is paid as advance reward to the concerned officers. Since the duty to impose is already decided by the authorities of the department prior to the final assessment with reference to the amount of advance payment as reward, any order passed by them is tainted with pecuniary bias.

3. In the counter-affidavit filed by the respondents, it is stated that based on the intelligence gathered, the Superintendent of Central Excise made a search to seize incriminating documents relating to the unaccounted transaction of tread rubber. The search was conducted and the seizure was effected strictly in accordance with law. The petitioner appeared before the Superintendent, the Central Excise Headquarters on 5-1-1987 and gave a voluntary statement pursuant to a summons issued to him. The workers of the petitioner''s factory made statements voluntarily. No threat or force was used. The scheme of reward in the case of evasion of duty and seizure has been in existence for a long time. Various instructions were issued from time to time providing guidelines in connection with the rewards. The scheme provides for a high power committee to examine each case of reward. These committees are headed by the Heads of Departments. The reward is being sanctioned to officers who actually participated in detection of duty evasion. The adjudicating authorities did not derive any benefit under the reward scheme. The officers who derive the benefits of the reward scheme do not participate in the adjudication process. The adjudicating authorities are completely free and independent in their functioning. There are provisions of appeal at various levels, before the departmental authorities as well as before the appellate Tribunal. The allegation of pecuniary bias on the part of adjudicating officers is baseless.

4. It is submitted by the learned counsel for the petitioner that the petitioner has in fact attended in the assessment proceedings. Hence he did not press the prayer for quashing the show cause notice.

5. On a perusal of the scheme (Ext. P4), it appears that neither the assessing authority nor the appellate authority under the Act are entitled to get any reward in connection with the detection of duty evasion. The allegation that the assessing authorities are likely to pre-judge the amount of duty to be charged on account of the pecuniary bias on the ground that the percentage of it is paid to the concerned officers in advance does not appear to be sound. The assessee has a right under the Act to challenge the legality or the validity assessment before a number of authorities including the statutory tribunal and the High Court. In these circumstances it is not expected that the assessing authority would give a biased judgment contrary to the evidence on record. A similar question arose before a Division Bench of the Calcutta High Court in I.T.C. Ltd. Vs. Union of India (UOI), In that case it was contended that the Director of Anti-Evasion (Excise Department) was prejudiced against the assessee because of the aforesaid reward scheme. It was held that since there is a scheme for rewarding the officers for any detection of any excise fraud and there is an element of pecuniary interest involved, the Director will be inclined to uphold the allegations

of excise fraud is misconceived because the Director himself will not get any reward if the Department succeeds in the case. As for the contention on behalf of the appellants that the Director may be influenced by the prospect of some of the officers of his Department getting the remuneration, if the Director has no personal pecuniary interest in the matter, one fails to see how he can be charged with having any interest in the matter. If this argument is taken to its logical conclusion, so long as the reward scheme subsists, no officer of the Excise Department, however high his position may be, can hear any case of excise fraud.

6. We concur with the observations made by the Calcutta High Court. In this view of the matter, we are of the opinion that the scheme in question does not suffer from any illegality or unreasonableness.

The Writ Petition is dismissed. No costs.

