(1990) 11 AHC CK 0129

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 663 of 1989

Geep Industrial Syndicate Ltd. APPELLANT

Vs

Collector of Central Excise RESPONDENT

Date of Decision : 16-11-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 173C(1), 173C(11), 173C(2), 173C(3), 173C(4)
Central Excises and Salt Act, 1944 — Section 35D, 4

Citation : (1991) ECR 263 : (1992) 58 ELT 443

Hon'ble Judges : B.P. Jeevan Reddy, C.J;V.N. Mehrotra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Jeevan Reddy, C.J.—The petition is directed against the order dated 14th April, 1989 communicated by the Assistant Collector, Central Excise Division, Allahabad. The said order was passed upon an application filed by petitioner under sub-rule (11) of Rule 173C of the Central Excise Rules.

2. The petitioner is manufacturer of dry battery torches. The body of the torches is made of aluminium. The petitioner says that while molding and manufacturing the torches, certain quantity of scrap (cuttings) is obtained which is not useful for any purpose of the petitioner. The petitioner says that as and when sufficient quantity of scrap is collected in his premises, he sells it. There are persons known as ''Kabaris'' who come and purchase the same. The petitioner says there is no fixed price for this scrap which is treated as ''waste''. The price depends upon negotiations that take place on each occasion. It is for this reason, the petitioner says, he could not file the price list for the approval of the authority concerned as required by the Central Excise Rules and was obliged to make an application under sub-rule (11) of Rule 173C, on 15th December, 1987.

3. The application dated 15th December, 1987 was rejected under the impugned order, which reads as follows:-

"CENTRAL EXCISE DIVISION: ALLAHABAD C. No. V/3063/86/MPX1/dated -4-1989.

To

M/s. Geep Industrial Syndicate 28 South Road, Allahabad.

Subject: Permission for assessment of duty on Invoice value and exemption from submitting Price List under Rule 173 (ii)by M/s. Geep Industrial Syndicate Ltd., Allahabad C/Reg.

Please refer to your letter C. No. EX:3:11.1.1.246 dated (12-4-1988) 17-6-1988.

In this connection it is to inform you that your request for permission of assessment of duty on Invoice Value under Rule 173-C(ii) has not been acceded to by the Collector of Central Excise, Allahabad as there does not seem to be much justification in according such permission.

Sd. Illegible 14-4-1989

For Assistant Collector Central Excise: Division Allahabad.

Copy to the Superintendent Central Excise M.O.R. (Urban II) Allahabad with reference to the then Superintendent Central Excise Range III''s letter C.No. 28-Torch/III/88/71 dated 31-1-1989 for information and necessary action.

For Assistant Collector Central Excise: Division Allahabad."

4. The counsel for the petitioner urged three contentions:-

(1) the impugned order is not a speaking order;

(2) it is not passed by the Collector but by the Assistant Collector; and

(3) even if it is held that the authority has a discretion in the matter, the discretion has to be exercised having regard to the relevant circumstances and the order must show that the authority has applied his mind to the relevant circumstances.

5. Rule 173C obliges the manufacturer/producer to file price list of goods assessable ad valorem. Sub-rules (1) to (6) and (11) of Rule 173C are reproduced below:-

(1) Every assessee who produces, manufactures or warehouses goods which are chargeable with duty at a rate dependent on the value of the goods, shall file with the proper officer a price list, in such form and in such manner and at such intervals as the Collector may require, showing the price of each of such goods and the trade discount, if any, allowed in respect thereof to the buyers along with such other particulars as the Central Board of Excise and Customs or the Collector may specify.

(2) Prior approval by the proper officer of the price-list filed by an assessee

under sub-rule (1) shall be necessary only, where the assessee -

(i) sells goods to or through a related person as defined in Section 4 of the Act, or

(ii) uses such goods for manufacture or production of other goods in his factory or

(iii) clears such goods for free distribution, or

(iv) clears such goods in any other manner which does not involve sale to a non-related person, or

(v) clears the goods of the same kind and quality from his factories located in the jurisdiction of different Collectors of Central Excise or Assistant Collectors of Central Excise,

(vi) submits afresh price-list or an amendment of the price-list already filed with the proper officer and which has the effect of lowering the existing value of the goods.

(3) On receipt of price-list under sub-rule (2) the proper officer may approve the price-list after making such modifications as he may consider necessary so as to bring the value shown in the said price-list to the correct value for the purpose of assessment as provided in Section 4 of the Act. He shall, thereafter, return one copy of the list approved by him to the assessee who shall, unless otherwise directed by the proper officer, determine the duty payable on the goods intended to be removed in accordance with such list.

(4) In case of assessees other than those specified in sub-rule (2),the duty payable on the goods shall be determined by the assessee himself on the basis of the price-list filed by him, subject to the provisions of sub-rule (6).

(5) Subject to the provisions of Rule 173CC, an assessee specified in sub-rule (2) shall not clear any goods from a factory, warehouse or other approved place of storage unless the price-list has been approved by the proper officer. In case the proper officer is of the opinion that on account of any enquiry to be made in the matter or for any other reasons to be recorded in writing, there is likely to be delay in according approval, he shall either on a written request made by the assessee or of his own accord allow such assessee to avail himself, of the procedure prescribed under Rule 9B for provisional assessment of the goods.

(6) In respect of assessees other than those specified in sub-rule (2), the assessment of the monthly return filed by such assessee under sub-rule (3) of Rule 173G may be made by the proper officer without the need for conveying specific approval to the price-list filed by the assessee. In case the proper officer is of the opinion that on account of any enquiry to be made in the matter or for any other reasons to be recorded in writing there is likely to be delay in assessment of the monthly return or the declared price is not acceptable for any reasons he may order that all the past and future assessments under such price-list shall be provisional. The assessee shall in such a case, follow the procedure prescribed under Rule 9B for provisional assessment of the goods. Such assessee

shall not remove the goods pending approval of the price-list unless he has executed, within 14 days of the receipt of an order from the proper officer, a bond in proper form for such amount with security or surety, as the proper officer may specify.

XX XX XX

(11) Notwithstanding the provisions of sub-rules (1) to (6), the Collector may, having regard to the nature of good manufactured or the frequent fluctuations of market price of such goods allow an assessee or a class of assessees to declare the price of goods transacted by the said assessees for the particular whole scale consignment on the gate pass or accomping challan or advice note and to determine the duty payable on such goods intended to be removed on the basis on the said declared price:

Provided that where the price thus declared on the gate pass or accompanying challan or advice note does not represent the value as determined u/s 4 of the Act, the proper officer may, after such further inquiry, as he may consider necessary, reassess the duty due and thereupon the assessee shall pay the deficiency if any, by a debit in his account-current or in case of excess payment take credit of the amount paid in excess in the manner prescribed in sub-rule (2) of Rule 173-I."

6. A reading of the above sub-rules discloses the scheme of the Rule. Every manufacturer/producer of dutiable goods (assessable ad valorem) is under an obligation to file with the proper officer a price-list in the prescribed manner. The proper officer shall make necessary inquiry and approve the list. Sub-rule (11), however, provides for a special situation. It empowers the Collector to allow an assessee or a class of assessees to declare the price of goods transacted by the said assessee or assessees for the particular wholesale consignment on the gate pass or accompanying challan advice note and to determine the duty payable on such goods intended to be removed on the basis of the said declared price, if he is satisfied that such course is warranted having regard to the nature of goods manufactured/produced.

7. The petitioner had filed an application under sub-rule (11). He had given certain reasons in support of the application. The Collector has to examine the same in the light of sub-rule (11), and either grant it or reject it. The order must, however, contain reasons however brief they may be. This is for the reason that such an order is amenable to a revision provided by the Act besides writ jurisdiction of this Court. The Supreme Court has held in Bharat Raja Vs. The Union of India (UOI) and Others, that in such a situation it is necessary for the authority to give reasons for its order. It observed that the duty to give reasons operates as a check on arbitrariness. This principle has been applied in a case under the Central Excise Act as well. See Travancore Rayon Ltd. Vs. Union of India (UOI), .

8. In the above circumstances, we are not inclined to dismiss the writ petition on

the ground of alternate remedy and to direct the petitioner to avail of the remedy u/s 35(D).

9. The impugned order is quashed. The Collector Central Excise shall pass a fresh order after considering all the relevant circumstances including any further representation that may be made by the petitioner in this behalf. Any such representation by the petitioner shall be made within three weeks from today. Any representation filed thereafter shall not be taken into account.

10. The writ petition is allowed accordingly in terms indicated above. No costs.