

(1974) 07 AP CK 0002
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4817/72

G.M. Deshi

APPELLANT

Vs

Assistant Collector of Central Excise and Customs and
Another

RESPONDENT

Date of Decision : 24-07-1974

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q, 32, 47, 52, 52A
Central Excises and Salt Act, 1944 — Section 12, 3
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 110

Citation : (1978) 2 ELT 578

Hon'ble Judges : Muktadur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muktadur J.

The petitioner is a general merchant and also trades in matches. He is, of course, not a producer or manufacturer of matches not a dealer within the meaning of the Central Excises and Salt Act, 1944. On 12-11-1971, the officers of the Central Excise Department Seized 68 match bundles of five gross from the possession of the petitioner on the ground that he was not able to produce documents proving the payment of Central Excise Duty. The petitioner produced Invoice No. 1 dated 23-8-1971 and letters dated 20-9-1971 which would show that the matches Were supplied by Messrs, Karnataka Agencies, Mysore-1. Messrs, Karnataka Agencies, Mysore-1 are not also manufacturers or producers. Later, however, the Asstt. Collector of Central Excise, Sivakasi, issued a show cause notice dated 24-4-1972 in his S. No. 333/71 calling upon the petitioners to show cause as to why the matches seized from the petitioner on 12-11-1971 should not be confiscated under Rule 9 Sub-rule (2) of the Central Excise Rules, 1944. The petitioner submitted a reply to the show cause notice and it appears that so far no final orders have been passed thereon. It is the case of the

petitioner that he was a purchaser of the seized matches from another purchaser and not directly from the manufacturer or producers of the seized matches and therefore he was a bona fide purchaser for value. He could not in any circumstances have known that the excise duty on those matches was not paid by the manufacturers or producers at the time when the matches were removed from the place of manufacture. He therefore prays for the issue of a writ under Article 226 of the Constitution of India compelling the respondents to release the 68 bundles of matches of five gross each seized from the possession of the petitioner on 12-11-71.

2. Sri Jogayya Sarma, the learned advocate appearing on behalf of the petitioner has raised four contentions which are these: (1) The petitioner is not a dealer within the meaning of the Central Excise Act and therefore the provisions of the Central Excise Act have no application to the case of the petitioner. (2) For purchase of matches no transport permit from the department is necessary as in the case of tobacco under Rule 32 which specifically provides for transport permit and therefore it was not necessary for the petitioner to have any document by way of transport permit to satisfy the authorities. (3) Confiscation of the commodities for which excise duty has not been paid is ordered only under Rule 173Q of the rules framed under the Act and only in the cases of manufacturers and producers, can confiscation take place and not in the case of any other person for Rule 9(2) of the Rules framed under the Act" is applicable to manufacturers and producers as defined under the Act and therefore the seizure from the possession of the petitioner is illegal as the petitioner is admittedly neither a manufacturer nor a producer. (4) That the Asstt. Collector of Central Excise, Sivakasi, has no jurisdiction to enquire into the matter as the matches were seized in Hyderabad.

3. I regret I cannot accede to any of the contentions advanced by the learned advocate. Matches are excisable goods according to item 38 of the schedule to the Act. According to Rule 9 of the rules framed under the Act no excisable goods shall be removed from any place where they are produced, cured, manufactured or any premises appurtenant thereto which may be specified by the Collector in this behalf until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed under the rules. Rules 52 and 52 A framed under the Act provide that when the manufacturer desires to remove goods on payment of duty either from a place or premises specified in Rule 9 or from a store-room or other place of storage approved by the Collector under Rule 47 he shall make an application in triplicate to the proper officer at least 12 hours before it is intended to remove the goods. The officer shall thereupon assess the amount of duty due on the goods and on production of evidence that the sum has been paid into the treasury or paid to the account of the Collector or in the Reserve Bank of India or State Bank of India, shall allow the goods to be cleared. Rule 52-A further provides that no excisable goods shall be delivered from a factory except under a gate-pass in the proper form as the collector may in any particular case prescribe signed by the owner of the factory and countersigned

by the proper officer. A plain reading of Rule 9 along with Rules 52 and 52-A would make it abundantly clear that excisable goods cannot be removed from the place of manufacture without the payment of duty and without a gate-pass. What is to happen where excisable goods are removed from the place of manufacture without the payment of excise duty or obtaining a gate-pass. This is answered by Sub-rule (2) of Rule 9 which provides that if any excisable goods are in contravention of Sub-rule (1) deposited in or removed from any place specified therein the producer or manufacturer thereof shall pay the duty leviable on such goods upon written demand made by the proper officer and shall also be liable to confiscation. Sri Jogayya Sarma contends that it is only the manufacturer or . producer that will be liable to pay the duty and penalty and the confiscation of the goods would only take place provided they are within the possession of the manufacturer or producer. But where the goods are in the possession of a third person as a purchaser, then the provisions of Sub-rule (2) of Rule 9 cannot be applicable. To my mind this contention is not tenable. Sub-rule (2) provides that where excisable goods are removed from a factory without recourse to Rule 52 and 52-A then the producer or the manufacturer would be liable to duty and also he would be liable to penalty which may extend to Rs. 2000/-. But so far as confiscation is concerned, such goods are liable to be confiscated wherever they are found and not necessarily in the possession of the manufacturer. This, to my mind, is the correct interpretation to be placed on the provisions of Sub-rule (2) of Rule 9. A manufacturer or producer will be liable to pay the duty and penalty on excisable goods on which no duty has been paid. But such goods can be confiscated or seized from anywhere or from whosoever they are with, I am supported in my interpretation by a judgment of the Madras High Court in W.P. No. 3427/71 dated 13-6-72 in Shakti Textiles Corporation v. Collector of Central Excise (1) W.P. No. 3427 of 1971 dated 13-6-1972 of the Madras High Court (unreported). The next question which was contended by Sri Jogayya Sarma that confiscation under the rule can take place only in conformity with Rule 173Q of the rules. Rule 173Q provides that if any manufacturer, producer or licensee of a warehouse removes any excisable goods in contravention of the provisions of any rules, then such goods are liable to confiscation and penalty. Sri Jogayya Sarma, submits that a reading of Rule 173-Q would show that the confiscation would take place only when the goods are in the possession of a manufacturer or a producer but not in the possession of a third person who does not come within the ambit of producer or manufacturer. Sri Subrahmanya Reddy, the learned counsel for the Central Government has brought to my notice that seizure in the instant case has not taken place under rule 173-Q. But the seizure has taken place u/s 110 of the Customs Act because the Central Government has issued a notification u/s 12 of the Central Excise and Salt Act applying Section 110 of the Customs Act. Therefore according to Sri Subrahmanya Reddy the seizure of the goods in the instant case has taken place according to the provisions of Section 110 of the Customs Act and not according to Rule 173Q. This contention of the learned counsel for the Central Government to my mind is tenable. Section 12 of the Central Excises and Salt Act provides

that the Central Government may by notification in the Official Gazette declare that any of the provisions of the Sea Customs Act, 1878 relating to penalties and confiscation with such modifications and alternations as it may consider necessary to adopt therein in respect of duties imposed by Section 3 of the Central Excises and Salt Act, may apply.

4. Finally Sri Jogayya Sarma contended that the Asstt. Collector at Sivakasi has no jurisdiction to enquire into the matter when excisable goods have been seized in Hyderabad. I regret I cannot accede to this contention also because it is to be remembered that the offence has taken place at the place of manufacture for non-payment of excise duty and the place of manufacture is Sivakasi and therefore I hold that the Asstt. Collector at Sivakasi is the proper authority to entertain the enquiry.

5. Finally it is to be noted that this writ petition has been filed against the issue of a show-cause notice. The petitioner has got an opportunity to show to the authority that the goods seized from his possession are not liable to be confiscated because he is a second purchaser or for any other reason which the petitioner consider to be in his favour to be advanced before the authority and the authority would dispose of them in the enquiry. Hence I see no merits in this writ petition. It is therefore dismissed with costs. Advocate's fee Rs. 100/-.