(1974) 03 KL CK 0011

In the High Court Of Kerala

Case No : O.P. No. 1219/71

Good Shepherd Rubber Company APPELLANT

Vs

Inspector of Central Excise and Others RESPONDENT

Date of Decision : 04-03-1974

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 171(I)

Citation : (1978) 2 ELT 66

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Judgement

P. Subramaniam Poti, J.—The petitioner challenges the levry of Excise duty demanded by Exts. P3 (A), P3 (B), P3 (C) and P3 (D) notices and also seeks to quash Extn. P7 order passed by the Collector of Customs and Central Excise, in an appeal filed by the petitioner against the levy of duty. Though-several contentions arise in this petition, it may not be necessary to go into all these, in view of the fact that the levy would be bad in case it is found to be a short levy coming within Rule 10 of the Central Excise Rules since there has been no notice calling upon the party to show cause why the short levy should not be made. Ext. P3 series indicate that the assessee had paid the duty on the goods correctly except to the extent indicated in the notices and the assessee is called upon to pay the duty short levied within 10 days. Admittedly there has been no notice prior to the issue of Fxt. P3 series notices. It this imposition of duty is on account of short levy, then, of course, Rule 10 of the Central Excise Rules is violated. That it is due to short levy is mentioned in Ext. P 3 series notices. It is not as if Rule 173-I(i) would be an answer as attempted here. That rule enables the proper officer to assess on the basis of the return. It is subsequently that these proceedings are taken and the notices indicate that duty has been short levied. Hence without a prior notice the levy ought not have been imposed on the petitioner. Whether on the merits the goods are such as would attract a levy is a matter on which it is not necessary, in the circumstances, to express any opinion. That is a matter which can be agitated before the appropriate forum. Suffice to say that the levy would be bad since that has been made in contravention of Rule. 10 of the Central Excise Rules. Accordingly Ext. P7 order and Exts. P3 series notices are quashed. It is open to the Excise authorities to proceed against the petitioner in accordance with law.

2. The original petition is allowed as above. parties are directed to suffer costs