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(1991) 02 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 315 of 1980

Hindustan Paper and Straw Board Mills — APPELLANT

Vs

Asstt. Collector, C. Ex. — RESPONDENT

Date of Decision : 01-02-1991

Acts Referred:
Penal Code, 1860 (IPC) — Section 420

Citation : (1992) 40 ECC 103 : (1991) 38 ECR 185 : (1992) 58 ELT 462

Hon'ble Judges : B.P. Jeevan Reddy, C.J;R.A. Sharma, J

Bench : Division Bench

Advocate : A.K. Gupta for Central Govt., for the Respondent

Final Decision : Allowed

Judgement

B.P. Jeevan Reddy, C.J.—Heard learned counsel for the petitioner and learned Standing Counsel for Central Government, Mr. A.K. Gupta.

2. This writ petition is directed against the order dated 16/17-7-1980 and the order dated 15-7-1980.

3. The petitioner says that it is a Small Scale Industry. It was granted licence in 1964. It is engaged in manufacture of Mill Board/Straw Board etc. A certificate of exemption dated 29-7-1964 was granted by the Central Excise Collector, Kanpur to the petitioner. It exempted the petitioner "from payment of duty on the 125 M.T. of Straw Board or Pulp Board including Grey Board in a financial year." The petitioner says that he was availing of the said exemption and not paying any duty. While so, he was served with a notice of demand in Form D.D. 2 dated 26-7-1969/19-8-1969 calling upon him to pay a sum of Rs. 1,25,765/- towards the duty on Pulp Board manufactured by him. The petitioner says that he made a representation against the said demand but to no avail before the Collector, Central Excise (Appeals). The appellate authority allowed the appeal by its order dated 20-12-1976 on the ground that the said order does not disclose on what account the demand was raised and also because the authority failed to intimate

the petitioner of the grounds of the said demand in spite of his repeated requests. The operative portion of the appellate order reads as follows:

"The result is that I myself am unable to analyse the reasons of the demand, the period to which it relates and the various factors, which lead the Assistant Collector in issuing the letter dated 25-8-1976. Therefore, I am not in a position to discuss the merits of the case. In view of the above discussions I have been left with no other option but to remand the case back to the Assistant Collector for a de novo decision after observing principles of natural justice and then passing a fresh speaking order. In view of my above decision the order of the Assistant Collector is set aside."

In pursuance of this order, it appears, a notice was given to the petitioner to produce documentary and oral evidence in support of his case. This was replied to by the petitioner on 27-6-1980, whereunder the petitioner protested what he called reopening of the case after 3 1/2 years and also submitted that he will submit his documentary and oral evidence at the appropriate stage. Thereupon, it appears on 17-7-1980 the Assistant Collector passed an order confirming the earlier demand. This order recites that in spite of giving repeated opportunities, the petitioner has failed to produce any documentary/oral evidence in support of his case and, therefore, the demand raised against him is confirmed.

4. In the counter-affidavit filed by the respondents, it is stated that the petitioner was not really entitled to exemption and that he obtained the exemption by misrepresentation of facts and by playing fraud upon the authorities. Inasmuch as the exemption was obtained fraudulently, it is submitted, the said exemption was withdrawn. It is also submitted that a criminal complaint was also laid against the petitioner u/s 420 I.P.C. It is submitted that demand for duty was validly raised and that even after the earlier order the petitioner did not produce any material to substantiate his case, for which reason the demand was confirmed.

5. In the rejoinder affidavit filed by the petitioner, he has denied that any such order withdrawing the exemption was passed by the authorities.

6. From a perusal of the material placed before us, it appears that the main basis for the demand raised against the petitioner is the order withdrawing the exemption granted to him earlier. Though the counter-affidavit repeatedly says that the exemption was withdrawn, it neither mentions the date of such order nor is a copy of the said order filed along with the counter-affidavit. It is not even stated in the counter-affidavit that such order was passed after notice to the petitioner. Evidently, exemption once granted cannot be withdrawn, that too on the ground of misrepresentation and fraud, without notice to and without hearing the affected parties. In any event when the appellate authority asked the Assistant Collector to pass a speaking order, he should have dealt with all these facts. Whereas the order dated 17-7-1980 does not refer to withdrawal of exemption nor to the circumstances in which it was withdrawn. It merely says

that since the petitioner failed to produce any oral or documentary evidence in support of his case, the demand was confirmed. That was not what the Assistant Collector was supposed to do. He was directed to pass a speaking order, which necessarily means dealing with the grounds and basis of the demand. Since he failed to do so and failed to adhere to the direction contained in the appellate order aforesaid, the order dated 17-7-1980 is liable to be quashed and is quashed herewith. The Assistant Collector shall hear the petitioner afresh and determine whether any duty is due from him and if so on what account and for what period. If the authorities find that there is an order of withdrawal of exemption and if such order is found to have been passed without notice to the petitioner, the same shall be treated as ineffective. In such a case the petitioner shall be called upon to explain why the exemption granted to him should not be withdrawn for the reasons to be specified in such notice. At such hearing and/or in pursuance of such notice, as the case may be it shall be open to the petitioner to raise such objections as are open to him in law. The authorities shall consider the same and pass an appropriate order in the light of the appellate order and in the light of the observations contained herewith.

7. The writ petition is allowed in the above terms. There shall be no orders as to costs.

