(1991) 08 CAL CK 0012

In the Calcutta High Court

Case No : C.R. No. 5005 (W) of 1980

India Foils Limited APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 07-08-1991

Acts Referred:

Citation : (1992) 37 ECC 74 : (1994) 2 ILR (Cal) 426

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Judgement

Susanta Chatterji, J.—The present Rule was obtained on 16.5.80 by the writ petitioner praying inter alia for declaration that aluminum foils under Item No. 27(c) of the First Schedule of the Central Excises & Salt Act, 1944 manufactured by the petitioner and exported under Bond under the Central Excise Rules, 1944 is not liable and/or chargeable with any duty of excise whatsoever and for a Writ of Mandamus commanding the respondents to recall and/or rescind the Show Cause Notices dated 3.8.1979 and 20.9.79 and to forbear them from taking any step in terms of the said Show Cause Notice and/or give any direction for levy or assessment of any alleged differential duty in respect of the goods exported under Bond and for other consequential reliefs to restrain the respondents to pass any order for levy or assessment or taking any step relating to assessment. It is alleged that the petitioner No. 1 - Company carries on business, inter alia, of manufacturing and selling of aluminium foils. There is a factory at Kamarhatty in the district of 24 - Parganas (South), West Bengal. It is stated in detail that since 1960 the aluminium foil has been brought under the purview of the Central Excise Tariff and is assessable to duty under Tariff Item 27(c) of the Central Excise Tariff. The writ petitioner-Company exported aluminium foils manufactured in their factory to different foreign countries. The Central Excise Rules provides special procedure for clearance of exportable exciseable goods which are contained in Rules 9, 12, 12(a), 13, 14, 14(b), 49 and 173(o) as well as the provisions contained in Chanter IX of the Central Excise Rules. It is placed on record that in terms of Rule 12, exciseable goods are allowed to be exported outside India by an exporter whether manufacturer or trader upon payment of full excise duty with claim for refund. After the export is completed such exporters are entitled to claim for refund of the duties to the extent allowed by the Central Government by issuing Notification under Rule 12. Prior to 1969, the petitioner was exporting Aluminium Foils by availing the facilities provided under Notification No. 179/62 dated 17.11.62 issued under Rule 12 of the Central Excise Rules, 1944. The duty was changed from specific to ad valorem in the year 1970 Budget and the rate of duty was fixed 24% ad valorem at the time. Sometime, in the year 1972 a revenue team from the Accountant General, Central, Calcutta Office visited the petitioner''s factory and it was pointed out that the petitioner was only entitled to excise rebate for exports only to the extent of Rs. 2,300 per Metric Ton in terms of Notification dated 7.5.69. The petitioner has been exporting Aluminium Foils under Bonds without payment of duty since 1972 and the last Bond accepted by the Central Excise Authorities, Calcutta to allow export clearance in terms of Rule 13/14 were valid upto 13.4.1980. It is further alleged that the petitioner-Company sells its products for human consumption as well as exports to the overseas market. It would appear from the Central Excise Rules that there are two distinct procedures provided to levy and for payment of duty for exportation of excisable goods. The petitioners are alleged to have received the impugned notices and according to the petitioners, the said notices have been issued without any application of mind and/or in-complete misreading and misconstruction of Rules 12, 13 and 14. The petitioner has challenged the said Show Cause Notices dated 3.8.79 and 20.8.79 on the ground that the respondents Central Excise Authorities have no power and/or authority and/or jurisdiction to ask for payment of any money unless such payment is warranted under the provisions of the Act and/or Rules. It is emphasized that Rule 9 of the Central Excise Rules specifically provides the manner and time under and/or at which levy and/or assessment of duty can be made. In the case of export under Bond, the goods travelled all through from the place of manufacture till the point of exportation without attracting any liability for payment of duty. The Show Cause Notices are alleged to be issued without jurisdiction and there is no occasion for making any assessment and/or levy of duty in the manner as sought for.

2. The writ petition is seriously contested by the respondent-authorities. It is placed on record that the writ petition is not maintainable inasmuch as there are a number of additional and/or alternative and/or efficacious remedy to canvass its grievances and the Writ Court is not the proper forum to entertain any disputed question of fact. Besides, it is further placed on record that in respect of the exports made by the petitioner without payment of duty by executing Bonds with surety/security under Rule 13, the petitioner is entitled only to those rebates as provided for under the Notification No. 148/69 dated 17.5.69 , the difference between the duty leviable on such goods as exported and the rebate allowed under the said Notification is Rs. 59,41,729.12P., which is the claim made in the said two Show Cause Notices dated 3.8.79 and 20.9.79. It is

detailed that the condition of this Bond is that if the pledger(s) and his/their legal representatives (shall observe all the provisions of the Central Excise Rules, 1944 and all such amendments thereto, as may be issued from time to time to be observed in respect of exciseable goods as removed). Prior to 20th January, 1972, The petitioner Company had exported Aluminium Foils when claim for refund of duty under Rule 12 of the Central Excise Rules has been made. Thereafter, the petitioner Company had effected exportation of aluminium foils under Rules 13 and 14 of the said Rules i.e. without payment of duty under Bond executed under Rule 14. It is claimed that a manufacturer can export exciseable goods under Rule 12 under claim of refund for duty and under Bond for their duty export as provided under Rule 13. It is denied that provision of Rule 9 contemplates a situation providing for that exciseable goods may be removed from the place of manufacture in case of exportation under Bond as provided under Rule 13. It is stated that Rule 13 and Rule 14 may be availed of not only by manufacturers who themselves exported exciseable goods manufactured in their own factory but also by a person who owns the goods i.e. he may be a person other than the manufacturer. All other allegations of the writ petitioner have been denied and/or controverted.

3. Mr. Jatin Ghosh, learned Counsel appearing for the petitioner has strongly argued that the impugned notices have been issued on the basis of deleted Rule 10A. He has drawn the attention of the court to the decisions reported in G.M. Shah Vs. State of Jammu and Kashmir, Poona Bottling Co. Ltd. and another Vs. Union of India and others, 1983(13) E L T 1991 , Collector of Customs & Central Excise, Madurai v. Premier Industries, Tricky and Ors. Indian Aluminium Co. Ltd. Vs. Union of India (UOI), . He has taken this Court to various averments made in various paragraphs of the writ petition and to appreciate scope of Rules 9, 12 and 13 of the Excise Rules.

4. Mr. Roychowdhury has strongly submitted drawing the attention of the Court to the scope of Rule 13 and Rule 12 of the Central Excise Rules. He has very much relied upon the case reported in 1981 ELT 642 . He has also referred the decision reported in Lokenath Tolaram, etc. Vs. B.N. Rangwani and Others, and Geep Flashlight Industries Ltd. Vs. Union of India (UOI) and Others, .

5. This Court has patiently gone through the pleadings of the parties and considered the submissions made on behalf of the respective parties for effective adjudication of the matter in dispute. A short point has arisen in this case as to whether the impugned notice to show cause and steps to initiate the proceedings by the respondent authorities are lawful and justified or not. The petitioner''s grievance is that by interpreting the relevant excise Rules, the issuance of the impugned notices and steps to initiate proceedings are without jurisdiction and the interference of the Writ Court is necessary. This Court has also gone through the relevant Rules 12 and 13 of the Central Excise Rules. The dispute is as to whether Rule 12 or Rule 13 will be attracted in the facts and circumstances of the case.

6. Upon perusal of the materials on record, this Court is of the view that the respondent authorities have not acted illegally and/or irregularly in issuing the impugned notices. The petitioner can very well file the replies and the matter can be adjudicated by the appropriate authority by giving full opportunities of hearing to the petitioner. The steps taken by the respondents are not contrary to and/or inconsistent with the provisions of law necessitating any interference by the Writ Court. There is no jurisdictional error in issuing the impugned notices. After filing the reply, the petitioner can contend before the authority concerned as to whether under the facts and circumstances either Rule 12 or Rule 13 is attracted.

7. Upon perusal of the materials on record and in view of the ratio of the decision cited from the Bar, this Court is of the clear view that the interpretation made by the petitioner as to the applicability of the Rules in the facts of their case is not correct. The steps taken by the respondent authority, on the other hand, are ex facie found to be lawful and justified. The challenges made by the writ petitioner are misconceived, speculative and with a motive to delay the matter and to forestall the proceedings according to law.

8. For the foregoing reasons, this Court does not find any merit in the writ petition. The Rule is discharged. All interim orders are vacated. There will be no order as to costs.