(1993) 11 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9982-M of 1993

Jagan Nath Nagpal and Co. — APPELLANT

Vs

Asstt. Collr. of C. Ex. — RESPONDENT

Date of Decision : 19-11-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 173G, 173Q, 226, 52(A), 53
Central Excises and Salt Act, 1944 — Section 9

Citation : (1994) 70 ELT 63

Hon'ble Judges : G.S. Chahal, J

Bench : Single Bench

Advocate : T.S. Doabia, for the Appellant; D.D. Sharma, for the Respondent

Final Decision : Allowed

Judgement

G.S. Chahal, J.—Inder Kumar Arora - petitioner, seeks quashing of charges framed by the Court of Shri B.S. Mehandiratta dated July 20, 1993.

2. The petitioner is a Proprietor of M/s. Jagannath Nagpal & Co. A notice dated April 6,1987 was issued to his firm by the Collector, Central Excise & Customs, Chandigarh to show-cause as to why Central Excise duty amount. ing to Rs. 7,45,223.62 should not be recovered from them as the party had resorted to suppression of facts/wilful mis-statement and also why penal action should not be taken. The petitioner filed written explanation, but the Collector passed a joint order holding that the petitioner, M/s. Shri Krishna Oil Mills and M/s. Shri Ram Cotton & Silicate Factory, Amritsar had manufactured and cleared sodium silicate of the value mentioned in their respective cases and value of these clearances had been suppressed by them and, thus, a duty of Rs. 7,45,223.62 was imposed on the basis of clandestine removals of suppressed production of sodium silicate during the period March, 1982 to March, 1986. This order is Annexure P. 2. On appeal, the Appellate Tribunal while allowing the appeal set aside the order Annexure P. 2.

3. The respondent had also filed a complaint u/s 9 of the Central Excises and Salt Act, 1944 read with Rule 9(1), 52(A), 53,173G, 173Q read with Rule 226 of the Central Excise Rules, 1944 on the same facts on the basis of which show cause notice Annexure P-1 had been issued by the Collector. This complaint in Annexure P.5. The petitioner filed an application before the Chief Judicial Magistrate, Amritsar, bringing to his notice that the appeal had been allowed by the Appellate Tribunal and the order Annexure P.2 had been set-aside. However, the court dismissed the application of the petitioner and continued with the proceedings and framed the charges.

4. Mr. D.D. Sharma, who appears for the respondent, states that he has received instructions through Shri Rajiv Sood, Inspector, not to contest this Petition.

5. Since the Appellate Authority had quashed the order of the Collector Annexure P.2, the net result of the order was that the plea of the department that the petitioners had indulged in clandestine removal of the sodium silicate was not accepted and thus, no default had been committed by the petitioner in payment of the excise duty. In this situation, the matter having been finally settled by the Appellate Authority, no prosecution on the same facts was legally competent, and tine complaint cannot terminate in an order of conviction, the continuation of such a complaint is thus abuse of process of court.

6. I, hereby, allow the petition and quash the impugned charge and consequent proceedings. This petition stands disposed of.