(1993) 01 GAU CK 0003

In the Gauhati High Court

Case No : Civil Original Petition Contempt No. 122 of 1991

Jeanny Plywood Industrial Ltd. APPELLANT

Vs

Lamla, Collector Customs and Central Excise RESPONDENT

Date of Decision : 12-01-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B, 11B(2), 11B(3), 11C, 11D
Contempt of Courts Act, 1971 — Section 2

Citation : (1993) 2 GLR 292

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : J.P. Bhattacharjee and A.K. Maheswari, for the Appellant; K.N. Choudhury, for the Respondent

Judgement

S.N. Phukan, J.—In the Civil contempt petition the Petitioner is a company registered under Companies Act, 1926 and carries on business of manufacture and sale of Plywood, block boards and other Plywood and timber products. After coming into force of the Central Excise Tariff Act, 1985 a new tariff was introduced with effect from 28.2.86 and wood and other timber items were included in Chapter 44 of the Schedule. The Petitioner Company submitted classification list in respect of block boards under sub-heading 4410.90 under the said Chapter 44 of the Schedule of the above act. But it was urged that the Assistant Collector, Customs and Central Excise Dibrugarh without giving any opportunity to the Petitioner company illegally classified block boards under sub-heading 4408.90 instead of 4410.90, thereby compelling the Petitioner company to pay Central Excise duty under sub-heading 4408.90 under protest.

2. The Custom, Excise and Gold Appellate Tribunal Special Bench ''D'' New Delhi held that block boards be classified under sub-heading 4410.90 and also allowed consequential relief. Thereafter, the Petitioner company submitted refund claims for Rs. 55,22,052.21 paise. The Assistant Collector who has been impleaded as O.P. No. 2 in this petition by his order dated 4.2.91 held that the amount of Rs.

50,24,545.00 and Rs. 2,44,344.00 is refundable but rejected the claim of the present Petitioner company on the ground that it was contemplated to file an appeal before the Supreme Court. Thereafter the Petitioner company approached this Court by filing a writ petition claiming refund of the amount which was registered as Civil Rule No. 994/91 and by judgment and order dated 20.5.91 directed the Respondents to refund the above amount within a period of two months. The liberty was also given to the Petitioner company for correction of any mistake in calculating the amount, I was also directed that so far the interest was concerned the matter would come up for hearing in the usual course. The copy of the judgment of this Court has been annexed as Annexure-1.

3. The Petitioner company submitted the certified copy of the judgment of this Court before the Respondent No. 2 on 29.5.91, Representative of Petitioner Company also approached Respondent No. 2 but inspite of repeated requests it has been alleged that Respondent No. 2 did not show "any indication whatsoever to comply with the above direction of this Court." It has also been alleged that the Respondent No. 1 also gave advice to Respondent No. 2 not to make any payment.

4. In view of the above facts in the present petition the Petitioner company has alleged that both Respondent Nos. 1 & 2 intentionally and deliberately with ulterior motive refused to make payment in total disregard and utter violation of the order of this Court. Petitioner company has alleged that both the Respondents have committed Civil Contempt u/s 2(b) of the Contempt of Courts Act, 1971.

5. It may be stated that after the present petition was filed Respondents prayed that the order passed by this Court in Civil Rule No. 994/91 may be kept in abeyance as a special leave to appeal petition was being filed before the apex court which was allowed by order passed in the main civil rule. Ultimately the petition for Special Leave to Appeal was dismissed.

6. It may be stated that in the application, filed by the Respondent on 14.8.91 a statement was made that the SLP had been filed which was an incorrect statement as the petition was filed only on 23.8.91 and for the above incorrect statement the petition was filed by the Respondents on 29.8.91 tendering apology for the mistake and also praying to keep the order in abeyance till disposal of the petition before the apex court. Again on 12th September 91 a petition was filed on behalf of the Respondents and in paragraph 7 it has been specifically stated that there was no wilful violation and/or disobedience of the order passed by this Court on 20.5.9l in the above Civil Rule No. 994/91 and it has been stated that the order could not be complied with in view of the SLP filed before the Apex Court.

7. On 21st December/91 the Respondent filed a petition before this Court bringing it to the notice that during the pendency of the present petition the Central Excise Act, 1944 was amended by the Central Excise and Customs Law

(Amendment) Act, 1991 with effect from 20.9.91 and by the said amending act the provisions of Law relating to refund of Central Excise duty as contained in Section 11B have been amended regarding refund of such duty and this provision has been given retrospective effect. By the said amending act Section 11C and 11D were also amended and new Sections namely Section 12A, 12B, 12C and 12D were introduced. It is not necessary to refer to other amendments made by the above amending Act, 1991. The Respondents have urged that in view of the amendments made after the order of this Court the amount claimed by the Petitioner company cannot be refunded, and accordingly it was prayed that the above may be allowed to be credited to the consumer welfare fund as per provision of Section 12C of the Act.

8. Heard Mr. J.P. Bhattacharjee, learned Counsel for the Petitioner and Mr. K.N. Choudhury learned Central Govt. Standing Counsel.

9. The only question to be decided in this contempt petition it whether Respondents have committed contempt of this Court. The word "civil contempt" has been defined in Clause (b) of Section 2 of the Contempt of Court Act 1971 which means wilful disobedience of any judgment, decree, direction order, writ or other process of a court or wilful breach of undertaking given to a court. It may be stated that every infraction of the court''s order may not amount to contempt of court and it is only a wilful and deliberate violation of the court''s order and the conduct on the part of the contemnor, which would amount to contempt of court. In the allegation of contempt against a person it has to be carefully considered by the court dispassionately in order to see if there has been deliberate and wilful defiance to the order of the court so as to attract an order of conviction and sentence of contempt. Section 13 of the Act, inter alia, provides that notwithstanding anything contained in any law, no courts shall impose a sentence for a contempt of Court unless it is satisfied that the contempt is of such nature as it substantially interferes, or tends substantialy to interfere, with due course of justice, In most of the cases it has also to be proved that disregard of any order passed by any court was wilful and not bona fide.

10. In the case in hand after the order was passed by this Court the Respondents approached this Court for extension of time and also took steps for approaching before the apex court against the order of this Court. Even though apex court rejected the petition filed by the Respondent, it cannot be held that there was wilful disobedience of the order of this Court. The conduct of the Respondents cannot be also said to be malafide. During the pendency of this petition, Legislature has changed the law regarding refund, as directed by this Court and the conduct of the Respondent in taking shelter under the amended provisions of the Act cannot be said to be malafide.

11. This Court directed the payment of the amount on the basis of the unamended law and in view of the order passed by the Assistant Collector, Dibrugarh on 4.2.91 which has been annexed as Annexure-17 to the main writ petition. From the operative portion of the said order I find that on the basis of

calculation, the Assistant Collector held that the above amount is refundable to the present Petitioner but rejected the claim "due to the reason that the department is contemplating to file appeal before the Hon''ble Supreme court against tribunal''s order No. E/689/90-D dated 23.10.90."

12. Mr. J.P. Bhattacharjee learned Counsel for the Petitioner has urged that the ground on which the Assistant Collector refused to refund the amount cannot be a valid ground and as such the Petitioner company is entitled to get refund. This aspect of the matter was duly considered by this Court and accordingly the order was passed and for noncompliance of the said order the present contempt petition has been filed. Mr. Choudhury learned Standing Counsel has urged that after the filing of the contempt petition, law has been amended and the Respondents were justified in refusing to pay the amount on this ground. According to Mr. Choudhury the law has been settled and in similar petitions which came up before this Court, it was held that in view of the change in the law no case of contempt was made out in all the petitions.

13. In Kit Ply Industries Limited v. Mr. S. Syiemiang 1992 (7) GLJ 356 the Division Bench of this Court considered a similar contempt petition vis-a-vis the provisions of the Central excise and Customs Laws (Amendment) Act 1991, which came into force on 20.9.91 and held that no contempt was committed by the Respondents in view of charge the law, Similar view was expressed in National Plywood Industries Limited v. K.A. Mazumdar 1992 (1) GLJ 409 and in Sarada Plywood Industries Limited and Anr. v. L. Kalfula 1992 (1) GLJ 231.

14. I may refer to relevant provisions of the amending act, 1991. Sub-sections (2) and (3) were introduced in Section 11B which run as follows:

(2) If on receipt of any such application, the Assistant Collector of Central excise is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable he may make an order accordingly and the amount so determined shall be created to the Fund:

Provided that the amount of duty of excise as determined by the Assistant Collector of Central Excise under the foregoing provision of this Sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to,

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India:

(b) unspent advance deposits lying in balance in the applicants account current maintained with the Collector of Central excise:

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act.

(d) duty of excise paid by the manufacturer if he had not passed on the incidence of such duty to any other person.

(e) the duty of excise borne by the buyer, if he had not passed on the incedence of such duty to any other person.

(f) the duty of excise borne by any other such class of applicant as the Central Government may, by notification in the official Gazette specify:

Provided further that no notification under Clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provison of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in Sub-section (2).

15. Therefore, reading Sub-sections (2) and (3) it is clear that even after there is any judgment or order of any court directing refund, such refund shall not be made except as provided in Sub-section (2) of Section 11B. So the Respondents were justified in not refunding the amount as per direction of this Court as such refund court as such refund has to be made in accordance with the above Sub-section (2). In the case in hand Clause (d) of Sub-section (2) is relevant and the Petitioner is entitled to get refund it it can be shown that the Petitioner company had not passed the incidence of such duty to any other person. Before this Court various documents were produced to bring home the point that under the above Clause (d) the Petitioner company is entitled to get refund that it has not passed on such duty to any other person. But in the present contempt proceeding this Court cannot go into the above aspect of the matter. That apart, under the Sub-section (2) of the above Section 11B the power has been invested with the Assistant Collector to make appropriate enquiry under the above Sub-section.

16. I have perused the order dated 4.2.91 passed by the Assistant Collector Dibrugarh vide Annexure 17 of the writ petition and I do not find that this aspect was considered by the said authority and this was rightly not done as law was subsequently changed. I, therefore, direct that the Assistant Collector shall reopen the case and after giving the Petitioner company an opportunity for producing the documents and after hearing shall decide the question of refund under amended provision of the Act. This shall be done within a period of 3 months from today.

17. As no case of contempt has been made out against the present Respondents case the petition is closed and disposed of with the direction stated above.