(1969) 11 OHC CK 0010

In the Orissa High Court

Case No : O.J.C. No. 72 of 1965

Jharana Mills Ltd. APPELLANT

Vs

Assistant Collector, Central Excise and Others RESPONDENT

Date of Decision : 12-11-1969

Acts Referred:

Central Excises and Salt Act, 1944 — Section 36
Customs Act, 1962 — Section 129

Citation : AIR 1970 Ori 155 : (1970) 36 CLT 285

Hon'ble Judges : G.K. Misra, C.J;S.K. Ray, J

Bench : Division Bench

Advocate : R.C. Patnaik, for the Appellant; G. Rath, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The petitioner is a private limited company with its registered office at Jharana in the district of Ganjam and is mainly a manufacturer of Oils and Oil products, and is licensed for such manufacture. A proceeding was taken against the petitioner by the Deputy Superintendent of Central Excise, Berhampur, as a result of a surprise visit to the factory on 2-2-1961. In due course an order was passed on 11-9-62, as per Annexure A whereby a sum of Rs. 6726-24 P. was demanded from the petitioner by way of duty. Over and above this, a penalty of Rs. 250/- was imposed. Against this order the petitioner carried an appeal. The Colletcor Central Excise, by his order dated 1-8-63 dismissed the appeal for non-compliance with the provisions of Section 129 of the Customs Act, 1962 read with Government of India, Ministry of Finance (Department of Revenue) Notification No. 68/63 dated 4-5-63 without going into the merits of the case.

In other words, the petitioner was called upon to deposit the entire amount of duty before the appeal was heard. On failure to make such deposit the appeal was dismissed as not maintainable. Against the appellate order a revision (was?) carried to the Central Government u/s 36 of the Central Excises and Salt Act,

1944. By an order dated 20-1-1965 (Annexure D) the Central Government dismissed the revision application. It runs thus:--

"Government of India have carefully considered all the points raised by the petitioners, but they regret that they do not find any justification for interfering with the order in appeal which is correct in law and based on facts. The revision application is accordingly rejected."

2. Mr. Patnaik on behalf of the petitioner contends that the revisional order is without jurisdiction inasmuch as a quasi-judicial power could not have been exercised without the petitioner being heard. We need not express any view on this question, as the appellate order is liable to be quashed on the ground that Section 129 of the Customs Act, 1962 --which came into force on 1-2-1963 -- has no application to the impugned order passed by the Deputy Superintendent of Central Excise on 11-9-62. Further, by virtue of the decision of the Supreme Court in Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, . Section 129 of the Customs Act is not procedure relating to appeal. Their Lordships observed thus : "Under Section 35 of the Central Excises and Salt Act, 1944, a person aggrieved by any decision or order has an unfettered right to appeal. Section 129 of the Customs Act 1962 which was made applicable to duties imposed under the Central Excises and Salt Act, by notification u/s 12 of the Act, requires the appellant to deposit the duty or penalty pending an appeal. Section 129 thus whittles down the substantive right to appeal u/s 35 and accordingly it cannot be regarded as a "procedure relating to appeal" within Section 12 of the Central Excises and Salt Act. The notification dated 4-5-63 applying Section 129 of the Customs Act is therefore not valid."

On the aforesaid view the order of the appellate authority dismissing the appeal as non-maintainable for non-deposit of the duty cannot be sustained in law. The revisional order accepting the said view is equally contrary to law. We would accordingly quash the revisional order dated 20-1-1965 and the appellate order dated 1-8-1963.

3. The writ application is allowed with costs. A writ of certiorari be issued quashing the aforesaid two orders. A writ of mandamus be also issued directing the opposite party No. 2 to hear the appeal on merits. Hearing fee Rs. 100/- (Rupees one hundred only).

S.K. Ray, J.

4. I agree.

