(1974) 10 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2253 of 1971

Khazanchi Paper and Board Mill APPELLANT

Vs

Supdt. of Central Excise RESPONDENT

Date of Decision : 04-10-1974

Acts Referred:

Central Excise Rules, 1944 — Rule 178, 178(2), 178(3), 181
Central Excises and Salt Act, 1944 — Section 36
Penal Code, 1860 (IPC) — Section 109, 116, 161

Citation : (1974) 10 AHC CK 0015

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.L. Gulati, J.—The petitioner is a partnership firm. It had a factory for the manufacture of Mill Board situated at 126/45, I Block, Govindnagar, Kanpur. / According to the petitioner, it shifted the factory to 176B, Cooperative Industrial Estate, West Govindnagar Kanpur with effect from 1st July, 1964, where he installed some new machines in place of worn out machines which he had disposed of. The petitioner was holding a licence under the Central Excises Act in Form No. L-4. Under notification No. 35/64, dated 1st March, 1964, issued by the Government of India under the Central Excise, Act, the petitioner was entitled to clearance of 125 metric tonnes of Mill Board duty free as the petitioner''s factory was established before the notification. The petitioner applied for the renewal of the licence in respect of the new premises and also claimed the concession under the aforesaid notification, dated 1st March, 1964. The Supdt, Central Excise, Kanpur refused the request of the petitioner to renew the licence and asked the petitioner to apply for a fresh licence making it clear that the petitioner will not be entitled to the concession in terms of the notification of 1st March, 1964. This action was taken by the Supdt., Central Excise, Kanpur, on the ground that the petitioner had sold away his original plant and machinery with all its accessories and equipments to another firm by the name and style of M/s. Goel Card Board

Industries, Kanpur and as such the petitioner was not entitled to the renewal of the licence and was entitled only to apply for a fresh licence, because the factory set up by the petitioner was a new unit located in a new premises. On appeal this order was set aside by the Collector, Central Excise. Thereafter, the petitioner''s licence was renewed and he was also allowed the exemption of 125 metric tonnes in view of continued. In the meantime, on 23rd Jan., 1967, the Senior Supdt, Central Excise, Kanpur, once again issued a notice to the petitioner requiring him to show cause why his licence should not be cancelled under Rule 181 of the Central Excise Rules, on the ground that the petitioner had shifted, the premises of the factory to a new place and it was not entitled to the concession of the notification dated 1st March, 1964. The petitioner filed a reply. While this matter was still pending, the petitioner was served on 7th of Nov., 1967, with another notice dated 4th November, 1967, from the Collector, Central Excise, Kanpur. This notice was also based on the same ground, namely, that the petitioner having sold the original factory had wrongly applied for and was granted an amendment of the licence. The petitioner was called upon to show cause why its licence should not be cancelled. The petitioner''s objection was not accepted and by an order dated 8th May, 1968, the Collector, Central Excise, cancelled the petitioner''s licence. The petitioner''s appeal to the Central Board of Excise and Customs, New Delhi also failed. Its revision u/s 36 of the Act also did not succeed before the Government of India. The petitioners has now approached this court under Article 226 of the Constitution.

2. The first question that arises is as to whether the Collector Central Excise, was competent to revise the order passed by his predecessor allowing the petitioner''s appeal, This contention was raised before the Collector, Central Excise and he has disposed of this contention in the following words :?

"This is not a case of review of earlier order as contended by the party, but fresh orders being issued in view of new facts that have come to light. It is evident from Bill No. 316, dated 1.7.61 that M/s. Khazanchi Paper and Board Mills Kanpur, have sold their factory to M/s. Goel Board Industries. Inspite of this they applied on 1.7.64 that their original licence may be amended to the extent that the premises have been shifted to 176-B, Co-operative Estate, Kanpur, thereby violating condition No. 4 of the L. 4 licence mis-declaring the facts".

3. It is true that the case of the petitioner was that he had merely shifted his factory from Govindnagar to the Cooperative Industrial Estate after having disposed of the old and worn out machines. But the authorities had been misled by this statement. This is dear from the order of the Supdt., Central Excise, dated 22nd March 1955 whereby he rejected the petitioner''s application for renewal of licence. In paragraph 2 of that order he states :?

"I am convinced from my personal Inspection of your factory premises on 12.2.65 and also the various documents produced before me by M/s. Goel Card Board Industries, Govindnagar, Kanpur that you have already sold away your original plant and factory will all its equipments in their entirety to M/s. Goel

Card Board Industries. My inspection as such has revealed the following facts beyond any shadow of doubt, (i) you had received an amount of Rs, 2,0001/- as sale proceeds in respect of your original factory with all its equipments and machineries, from M/s. Goel Card. Board Industries vide your voucher No. 318, dated 1.7.64.

(ii) Even in respect of the residential balance of paper board lying in the said factory on the date of the above transaction (sale) you had received an amount of Rs. 500/- from the purchasing party namely M/s. Goel Card Board Industries.

(iii) My physical inspection of your original factory at Govindnagar clearly showed that M/s. Goel Card Board Industries have, since then, been the sole owners of the factory, the ownership having come to them consequent on your transfer thereof through sale. This position is further confirmed by the fact that the monthly rent of the premises as well as the electric metre charges are being borne by the new owners, namely, M/s. Goel Card Board Industries.

(iv) My inspection of your proposed factory 176-B, Cooperative Estate, Kanpur clearly revealed that a new factory was being constructed by you and that there was nothing like any paper Board manufacturing machinery or plant or even its equipments (except some broken parts lying scattered here and there) in the proposed factory premises. In the context of these facts, the conclusion is irresistible that you are setting up a new unit in the new premises at Cooprative Estate and that you are still now making strenuous efforts to collect new plants and machineries for installation in the new factory."

4. Thus it is clear that the facts now relied upon by the Collector that the petitioner had sold its factory under Bill No 319, dated 1.7.64 is not a new fact. It was known to the Department and clearly mentioned in the order of the Supdt., Central Excise, quoted above. In the circumstances it cannot be said that the Collector was authorised to review the earlier order on the basis of new facts.

5. The real reason, however, for the action taken by the Department is contained in the order of the State Government, dated 17th December, 1970 (Annexure 7). This is what has been observed in paragraph 3 of that order :

"Regarding the point about the reopening the case the Government of India observe that on receipt of fresh evidence in this case which came to the knowledge of the Department when M/s. Goel Card Board Industries came in appeal to claim the concession under Notification No. 35/64, the petitioners were proceeded against and after observing the due process of law, action was taken to withdraw the concession enjoyed by the petitioner."

6. It appears that M/s. Goel Card Board Industries had also applied for a licence and claimed the benefit of the notification of 1st March, 1964. It is not clear whether that concession was granted to them or not. But it appears that such a concession must have been granted to M/s. Goel Card Board Industries and the petitioner''s licence was cancelled because two persons could not claim benefit of

the notification in respect of the same factory. In the first instance this fact does not relate to the case of the petitioner. If M/s. Goel Card Board Industries had applied for concession of exemption, the petitioner was not a party to that proceeding. In any case M/s. Goel Card Board Industries were certainly not entitled to the concession because the concession was available to a person who held a licence prior to the issue of the notification. M/s. Goel Card Board Industries has purchased the petitioners factory on 1st July, 1964 obviously after the notification of 1st March, 1964. Rule 178 of the Central Excise Rules makes the position very clear. Sub-rule (2) says that every licence shall be deemed to have been granted or renewed personally to the licensees and no licence shall be sold or transferred. Sub-rule (3) provides that where a licensee transfers his business to another person, the transferee shall obtain a fresh licence under the rules. The petitioner''s licence, therefore, could not be and was not transferred to M/s. Goel Card board Industries as a result of the sale of the factory. They had to apply for a fresh licence and that must have been done after 1st July, 1964. The concession under the notification was available to persons, who were licensees before 1st March, 1964. If the concession was granted to Goel Card Board Industries under the Notification of 1st March, 1964, the same was obviously wrong and in no way that fact could be a reason for cancelling the petitioner''s licence and its right to the concession under the notification.

7. This view finds full support from a decision of the Madras High Court in Agrawal Brothers Madras v. Union of India and Ors. 1972 (2) MLJ 476. Thus this ground could also not be the basis for the review, firstly, because it was not admissible being not relevant to the petitioner''s case and secondly because it was legally wrong.

8. The Collector was not competent to review the order of his predecessor admits of no doubt whatsoever. Orders with regard to insurance and cancellation of licences under the Central Excises and Salt Act and the Rules made thereunder are of a quasi judicial nature. Such orders are appealable and a revision lies to the States/Government against the appellate order. Unless specific power is conferred upon the authority concerned, it cannot review an order of judicial nature. In Ganesh Prasad v. State of U.P. 1967 A.L.J. 745 the court held that in the case of an authority exercising a judicial or quasi judicial " function there is no power in that authority to review an order made by it in the discharge of such function, unless a power in that behalf has been expressly conferred upon it.

9. That apart a licence can be revoked or suspended under Rule 181 only if the licensee is found to have committed a breach of any of the conditions thereof or any of the provisions of the Act or the Rules or has been convicted of an offence u/s 161 read with Section 109 or with Section 116 of the Indian Penal Code. It has not been shown that any of the conditions enumerated in Rule 181 was present so as to warrant the cancellation of the petitioner''s licence.

10. In the result the petition succeeds and is allowed. The order of the Collector, Central Excise, dated 8.5.68 (Annexure ''5''), the order, dated 24.3.69 passed by

the Central Board of Excise and Customs, New Delhi (Annexure ''6'') and the order of the Government of India, dated 17.12.70 (Annexure 7) are quashed.

The petitioner is entitled to the costs.

