(1996) 05 AHC CK 0134

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 133 of 1996

L.M.L. Limited APPELLANT

Vs

Asstt. Commr. of Cus. and C. Ex. RESPONDENT

Date of Decision : 17-05-1996

Acts Referred:

Central Excise Rules, 1944 — Rule 173C, 173F, 52A, 9
Central Excises and Salt Act, 1944 — Section 11A, 14, 14(2), 4
Constitution of India, 1950 — Article 226

Citation : (1997) 90 ELT 43

Hon'ble Judges : D.S. Sinha, J;B.M. Lal, J

Bench : Division Bench

Advocate : Ashok Khare, Somesh Khare and S.P. Gupta, for the Appellant; Vikram Gulati, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Sri S.P. Gupta, learned Senior Advocate, appeared for the petitioner and Sri Vikram Gulati appeared for the respondents and they were heard, at length and in detail.

2. The petitioner, a Company incorporated under the Companies Act, 1956, is engaged in the manufacture and sale of Scooters, having its manufacturing unit at C-10, Panki Industrial Estate ,Phase II, Kanpur, invoking the special and extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, prays that the summons dated 5th February, 1996 (Annexure -13 to the writ petition), notice dated 7th February, 1996 (Annexure -15 to the writ petition) and the show cause notice dated 27th March, 1996 (Annexure -16 to the writ petition), in so far as it pertains to the period beyond six months anterior to 27th March, 1996, be quashed.

3. From the pleadings before the court, it transpires that preventive team of the Central Excise Division-II, Kanpur, headed by the Assistant Commissioner, Central Excise Division-II, Kanpur, visited M/s L.M.L. Limited (Scooter Unit) on

31st October, 1995 and observed that the Company was having huge balance of (1) advance of scooter booking by customers and (ii) deposits from the dealers. Therefore, a letter dated 31st October, 1995 was issued to the petitioner for getting the detailed information in that regard which was replied to by letters dated 9th November, 1995,15/17th November, 1995,14th December, 1995, 27th December, 1995 and 29th December, 1995. But these letters lacked full and required information. This led to issuance of summons dated 5th February, 1996 to the Divisional Manager of the petitioner, u/s 14 of the Central Excises and Salt Act, 1944, hereinafter called the ''Act'', calling upon him to appear on 7th February, 1996 to give evidence and produce documents and records, pertaining to details regarding (a) scooter booking deposits which included period during which the deposit was collected, rate of interest applicable and its use by the company and (b) dealers'' deposits which included its use by the company etc.

4. It response to the summons, aforesaid, the petitioner sent a reply dated 7th February, 1996 taking a stand that there existed no occasion for issuance of summons as the matter had already been determined under the order of the Assistant Collector, Central Excise dated 21st November, 1985 and the order passed in appeal against the same.

5. It appears that the authorities were not satisfied with the reply of the petitioner. They, therefore, issued notice dated 7th February, 1996 requesting the petitioner to furnish account showing (a) full amount of advance/deposits existing in the books during the period between 1st April, 1991 till date alongwith datewise refund /adjustment made and rate of amount of interest paid relating to scooter booking deposit and (b) full amount of advance/deposits during the period 1st January, 1991 till date alongwith date wise refund/ adjustment and interest paid in respect of the dealers'' deposits. Information regarding the use of the said deposit during the period between 1991-95 was also sought for.

6. In response to the notice dated 7th February, 1996 the petitioner submitted a letter dated 14th February, 1996 enclosing therewith a list of security received/ refund with interest paid to the dealers during 1st April, 1991 to 31st January, 1996 and informed that the information regarding the scooter booking deposits was under preparation.

7. Later on, the Commissioner, Central Excise Commissionerate, Kanpur issued a notice dated 27th March, 1996, u/s 11A of the Act, to the petitioner requiring it to show cause within 30 days of the receipt of the notice as to why central excise duty amounting to Rs. 6,25,72,799.00 (BED 6,13,05,902.00 + SED 12,66,897.00) & Cess, amounting to Rs. 3,06,216.00 should not be demanded and recovered from the petitioner as per details given in the notice. The show cause notice required the petitioner to produce at the time of showing cause all evidences upon which it intended to rely in support of its defence. It further called the petitioner to signify as to whether it desired to be heard in person before adjudication of the case. It also warned that in the event of failure on the

part of the petitioner in responding to show cause notice the matter would be decided ex parte on the basis of the available records.

8. The show cause notice dated 27th March, 1995 is founded on the allegations of contravention of the provisions of Section 4 of the Act and Rules 9(i), 52A, 173C, 173F of the Central Excise Rules arising from non-payment of central excise duty on correct assessable value, giving of untrue certificate on the invoices issued under Rule 52A, giving wrong information in the questionnaire annexed to the price list filed under Rule 173C and no filing of Annexure II under Rule 173C after 1st April, 1994, and no determination of the correct central excise duty. The show cause notice is also founded on the allegations that, on the scrutiny of record, it was detected that central excise duty and cess had been short paid by the petitioner by misstatement and suppression of material facts in the various duty-paying documents and records; and there was contravention of the various provisions of the Act and the Rules framed thereunder with an intent to evade payment of central excise duty and cess. In support of the allegations the notice gives details of the materials in the shape of dates, documents and other evidence.

9. Instead of responding to the show cause notice dated 27th March, 1996 issued to it u/s 11A of the Act and availing the opportunity of representing its case, the petitioner has chosen to approach this court and urges it to quash the same.

10. Section 14 of the Act arms the Central Excise Officer duly empowered by the Central Government in that behalf with the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which he is making for any of the purposes of the Act. It provides that a summon to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned. Sub-section (2) of Section 14 of the Act imposes a statutory obligation upon all persons so summoned to attend, either in person or by agent. It also obliges the persons summoned to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required.

11. It is not disputed that an inquiry in respect of the payment of excise duty against the petitioner is being held and the impugned summons dated 5th February, 1996 and notice dated 27th March, 1996 have been issued to the petitioner in that connection. Therefore, in view of the provisions contained in Section 14 of the Act, no umbrage. can be taken by the petitioner in that regard. Otherwise also, the challenge to the summons and notice has sunk into insignificance in view of the fact that the petitioner responded to the summons and notice, and that the impugned show cause notice u/s 11A of the Act has been issued to the petitioner. Thus, the prayer for quashing the summons and notice has become redundant.

12. The show cause notice dated 27th March, 1996 issued u/s 11A of the Act is assailed by the petitioner on the ground that the same is without jurisdiction inasmuch as it was beyond a period of six months from the relevant date. In other words, it was beyond the period of limitation prescribed u/s 11A of the Act. Further ground of attack of the petitioner is that the extended period of limitation of five years invoked in the impugned show cause notice is not available as it was not a case of fraud, collusion or any willful misstatement or suppression or fact or contravention of any provision of the Act or Rules made thereunder with intent of evasion of payment of excise duty as all the requisite information had been duly furnished by the petitioner and were available on the records of the excise authorities.

13. It is to be noticed that, according to the impugned show cause notice u/s 11A of the Act, the allegations against the petitioner are :

(a) contravention of the provisions of Section 4 of the Act and Rules 9(i), 52A, 173C, 173F of the Central Excise Rules, arising from non-payment of central excise duty on correct assessable value,

(b) giving of untrue certificate on the invoice issued under Rule 52A,

(c) giving wrong information in the questionnaire annexed to the price list under Rule 173C,

(d) non-filing of Annexure - II under Rule 173C after 1st April, 1994,

(e) non-determination of correct central excise duty,

(f) short payment of central excise duty and cess by misstatement and suppression of material facts in-various duty-paying documents and records, and

(g) contravention of various provisions of the Act and Rules framed thereunder with an intent to evade payment of central excise duty and cess.

14. In the opinion of the court, these allegations are, primarily and substantially, factual, and, if proved, would empower the excise authorities to apply the extended period of limitation of five years, as provided in the proviso to Section 11A of the Act. The education upon the correctness of the allegations necessarily invokes production of evidence and scrutiny and appreciation thereof. Such an exercise is, normally, not undertaken by this Court in exercise of its special and extraordinary jurisdiction under Article 226 of the Constitution of India. The questions arising from the allegations contained in the impugned show cause notice being the questions of fact may better be examined by the excise authorities on the basis of evidence before them. The court has no doubt that if the authorities, on the basis of material produced by the petitioner before them in response to the show cause notice, are satisfied that the allegations are untrue or not substantiated, the impugned show-cause notice would be discharged. It would be inappropriate for this court, at this stage, to frustrate the investigation of the allegations contained in the impugned show-cause notice

which the excise authorities are statutorily bound to make under the provisions of Section 11A of the Act.

15. With regard to the contention of the petitioner regarding lack of jurisdiction founded on the alleged bar of limitation, the court is of the opinion that the same ought to be raised before the authority holding inquiry in pursuance of the impugned show cause notice. It is not a case of exfacie nullity or total lack of jurisdiction. Indisputably, the notice has been issued by the competent statutory authority. The plea of lack of jurisdiction raised herein is founded on the non-availability of extended period of limitation stipulated in the proviso to Section 11A of the Act which is based on the alleged absence of any fraud, collusion or any willful misstatement or suppression of fact or contravention of any provisions of the Act or Rules made thereunder with intent of evasion of payment of excise duty. Adjudication of these factors does involve inquiry of the questions of fact which ought to be held by the authority seized of the matter. The proceedings under Article 226 of the Constitution of India are not the appropriate proceedings for such adjudication. This view of the Court is fortified by the decision of the Hon''ble Supreme Court rendered in the case of the Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh and Ors., reported in Judgments Today 1995 (8) S.C. 331.

16. On behalf of the petitioner, decisions were cited to buttress the contention that this Court can entertain a petition against a show cause notice issued u/s 11A of the Act if there is no material on record to lead to conclusion of any fraud, collusion, willful misstatement or suppression of fact or contravention of any provisions of the Act or Rules made thereunder with intent to evade payment of duty attracting extended period of limitation of five years. There cannot be any quarrel with the proposition. But, in the instant case, the impugned show cause notice does disclose that, prima facie, there is ample material available on record before the authority seized of the inquiry in pursuance of the notice. If the material before the authority, disclosed in the impugned show cause notice, is not successfully rebutted by the petitioner, there may be occasion to conclude the existence of factors entitling the excise authority to apply the extended period of limitation and proceed to take further appropriate action permissible in law.

17. Therefore, on the facts and circumstances and for the reasons stated above, the Court declines to entertain this petition, at this stage, and relegates the petitioner to the alternative remedy of showing cause before the relevant authority.

18. In the result, the petition fails and is hereby dismissed, at the admission stage.