
(1993) 12 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No. 9806 of 1988

Majestic Match Works

APPELLANT

Vs

C.E.G.A.T., Madras

RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 226, 9(2)

Central Excises and Salt Act, 1944 — Section 11A

Citation : (1994) 70 ELT 529

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Mr. R. Janakiraman, for the Appellant; Mr. K. Jayachandran, for the Respondent

Judgement

Kanakaraj, J.—The petitioner is a small unit manufacturing safety matches. They had been availing of benefit of Notification No. 22/82

dated 23-2-1982 and paying Excise Duty at the rate of 1.60 per gross on the matches cleared from the factory. On 27-12-1985 the officers of the

respondents inspected the premises and on the basis of inspection a show cause notice was issued on 1-2-1987. In the cause notice it was pointed

out that the petitioner has suppressed the production of matches for the year ending March, 1986 and called upon the petitioner to show cause

why the penalty should not be imposed under Rule 9(2) and 226 of the Central Excise Rules, and why Section 11-A of the Central Excises and

Salt Act (hereinafter called "the Act") should not be invoked in respect of the claim for differential duty for the year 1985-86 to the tune of Rs.

19,237.50. The petitioner submitted her explanation, but by an order dated 7-7-1987 the second respondent rejected the explanation.

Consequently he imposed of Rs. 1,000/- and confirmed the demand of differential duty amounting to Rs. 19,237.50 invoking Section 11A of the

Act. According to the second respondent the petitioner had cleared 10,125 gross of matches during the year 1985-86 and the same was

decipherable from the Cooly Registers. The petitioner filed appeal to the first respondent and by an order dated 29-3-1988 the appeal was

dismissed, but the penalty was reduced to Rs. 500/-.

2. I am not called upon to go into the merits of the case because of a technical flaw pointed out in the order of the first respondent. The contention

is that the first respondent has not considered and rendered a finding on all the points raised by the petitioner in the appeal. Though the learned

counsel for the petitioner has referred to several grounds in the appeal, which according to him, has not been considered by the first respondent, I

am of the opinion that only one important point has not been adverted to by the first respondent. That relates to the bar of limitation u/s 11A of the

Act, in so far as demand for the duty for the months of January, February and March, 1986. Though in the grounds of appeal the petitioner has

referred to the months of January, February and March, 1985, it is apparently a mistake for 1986. This cannot seriously be disputed because the

show cause notice itself is for the year 1985-86. In fact, the first respondent has not considered the point whether on the facts of the case Section

11A of the Act could have been invoked at all.

3. It is no doubt true that the petitioner has also sought for a reference to the High Court on certain points of law and that application is said to be

pending on the file of this Court before a Division Bench. It is open to the parties to agitate that question separately. That would not prevent me

from holding that the order of the Tribunal is defective to the limited extent that they have not considered the question of limitation as pointed

above. On this short ground the order dated 29-3-1988 made in No. 176/1988 is set aside and the matter remitted back to the first respondent

for fresh disposal in accordance with law. The writ petition is allowed in the above terms. There will however, be no order as to costs.