(1979) 06 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 2391 of 1979

N. Kasia Pillai APPELLANT

Vs

Collector of Central Excise and Others RESPONDENT

Date of Decision : 25-06-1979

Acts Referred:
Central Excise Rules, 1944 — Rule 151, 223A

Citation : (1979) 4 ELT 617

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This writ petition coming on for orders as to admission upon perusing the petition and the affidavit filed in support thereof, and upon hearing the arguments of Mr. P. Shantnugham, Advocate for the Petitioner, the Court made the following order : --

2. This is a petition for the issue of a writ of certiorari to quash the order of the respondents. The petitioner is a dealer in tobacco with an L-5 Licence and warehouse. On a special stock taking conducted by the Central Excise Department it was found that there was a shortage of 12,091 Kgs., that is the recorded balance was 39,628 Kgs. whereas on physical check up it was found that there was a stock of only 27,537 Kgs. The Department considered two possibilities ; one is clandestine removal without permission from the warehouse in contravention of Rule 151 of the Central Excise Rules and alternatively driage or shortage due to natural causes falling under Rule 223-A. There being no clinching evidence to show that there was any clandestine removal by the petitioner, the Collector held that the petitioner cannot be held to have contravened Rule 151. Taking the question of deficiency in the stock, the Collector held that the deficiency is more than the normal standard of driage due to natural causes and after allowing a certain quantity, the Collector held the remaining tobacco to the extent of 7,471.36 Kgs. of tobacco to be liable to duty.

Accordingly by his order dated 19-2-1977, the Collector levied the duty, but in view of the past good record, did not levy any penalty. This order was confirmed by the Central Board of Excise

3. The learned counsel for the petitioner contended that the driage and deficiency in stock due to natural causes could be due to a variety of reasons and there could not be any fixed standard and in fact, in some instances cited by him, the percentage allowed was so high compared to the petitioner'' case and that the petitioner should have been allowed relief under Rule 223A. He also contended that there is no standard prescribed as a reasonable percentage of shortage in this type of cases and that therefore, once the Collector and the Board have accepted that the shortage was due to" driage on account of natural causes, they should not have restricted the quantity to what they called permitted driage and non-permitted driage. I am unable to agree with this contention of the petitioner. When once shortage was found in the stock, it is for the petitioner to explain under what circumstances the shortage has occurred and he must also satisfy that it was the entirety of the shortage which was normal to the satisfaction of the proper officer. When once "he proper officer considered that the driage was not normal but abnormal and herefore could not be accepted and that the entirety of the shortage could not be permitted as a deduction for levy of excise duty, this court cannot sit in judgment over that order and decide that the entirety of the quantity should be permitted as driage of shortage due to natural causes.

4. The next contention of the learned counsel for the petitioner is that Rule 223-A confers an arbitrary power on the proper officer as there are no guidelines prescribed to show what will be the normal standard and that therefore the rule is ultra vires I am unable to accept this contention either. What all the rules state is that if on a check of the accounts it is found that there is any shortage, when duty is leviable on the quantity found deficient I do not see how any arbitrary power is vested in this rule. The warehouse keeper is required to satisfy the proper officer as to how the deficiency has happened. That is a method of proof. It is true that some officers may require more stronger proof than the others. But that cannot be a ground to conclude that any arbitrary power is vested on the authorities concerned. Rule 223-A. in the nature of things has to be in this form as, even if any standard is prescribed, the petitioner might show peculiar circumstances, which warranted higher percentage being permitted. It is in those circumstances it is said that the warehouse keeper should satisfy the deficiency to the proper officer.

5. The writ petition therefore fails and it is accordingly dismissed.

