(1996) 07 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10106/96

Nalanda Tobacco Co. (P). Ltd. APPELLANT

Vs

Supdt., Central Excise and Customs, Hyderabad RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:

Central Excises and Salt Act, 1944 — Section 33
Customs Act, 1962 — Section 110
Customs Rules — Rule 209

Citation : (1996) 4 ALT 82 : (1997) 91 ELT 275

Hon'ble Judges : Lingaraja Rath, J;B.S. Raikote, J

Bench : Division Bench

Advocate : K.V. Simhadri, for the Appellant; P. Innayya Reddy for Central Government, for the Respondent

Judgement

Lingaraja Rath, J.—The question raised in this application is that the seizure of the plant and machinery as has been directed by order dated 13-5-1996 is not authorised in law. As it appears from the order and the counter-affidavit filed by the respondent the facts revealed are that a vehicle of the petitioner was intercepted on 10-8-1995 while it was carrying cigarettes produced by the factory on which the payment of duty had not been effected. The vehicle and the cigarettes were seized which were released to the parties provisionally on their execution of B 11 (SEC) bonds and security deposits. That case is being dealt with in OR No. 406/95 Adjn. by the Assistant Commissioner, Division IX, Hyderabad answerable to the Deputy Commissioner, Central Excise, Hyderabad. While so on getting information that the petitioner-company has indulged in clandestine production and removal of the excisable goods viz., cigarettes, a raid was conducted in which transport documents relating to the transportation of cigarettes consigned by Sri Venkateswara Enterprises, Kukatpally to M/s. Lakshmi Enterprises, Delhi were seized. It is the case of the Department that the scrutiny of the records revealed that the petitioner-company had manufactured and cleared 39,461 CFCs approximately of cigarettes on which the duty works out to about Rs. 15 crores approximately.

2. Mr. K. V. Simhadri, learned Counsel for the petitioned submits that since the plant and machinery are not goods on which the duty of excise had been avoided those are not liable to be seized, and that so far as the seized vehicle and cigarettes are concerned confiscation proceedings has already been started. It is also submitted that the plant and machinery can be confiscated only at the conclusion of the adjudication proceeding but that they are not liable to seizure and detention prior to the adjudication itself.

3. There is no dispute and indeed it is conceded that the provisions of the Central Excises and Salt Act, 1944 apply so far as confiscation related proceedings are concerned under the Customs Act, 1962 (Act 52 of 1962). Section 33 of the Central Excises and Salt Act, 1944 provides for adjudication by the designated authority of confiscation when confiscation of any goods is provided for under the Rules. Thus the provision for as to what goods are liable to confiscation is, under the provisions of the Act, to be provided for under the Rules. Rule 209 of the same Act provide inter alia in sub-rule (1) as to the events which would warrant a confiscation proceeding and under sub-rule (2) inter alia, where such facts as are referred to in clause (a), (b), (c) or (d) of sub-rule (1) occur and the duty leviable on the excisable goods referred to in that sub-rule exceeds Rs. 1 lakh the authority may direct confiscation of any land, building, plant and machinery of the unit. Section 110 of the Customs Act, 1962 vests authority, when the proper officer has reason to believe that any goods are liable to confiscation, to seize the goods. It has been explained in the counter-affidavit that the seizure has been effected in such manner as the plant and machinery are also liable to confiscation in the confiscation proceedings. That being so, we do not find any absence of power in the respondent to seize the plant and machinery.

4. The decision in Southern Steel Ltd. Vs. Union of India (UOI) and Others, a single bench decision, is cited before us to support the contention advanced on behalf of the petitioner. But a reference to the decision does not show any different view to have been taken. All that was said in the decision is that while Section 33 of the Central Excise Act empowers the adjudicating officer also to confiscate the plant and machinery yet there is no other provision which enables the authority to direct detention of plant and machinery prior to adjudication. In the case the provisions of Rule 209 and Section 110 of the Customs Act were not being considered. That being so the decision has no applicability to the facts of the present case. The learned Counsel for the petitioner also places reliance on a decision in Sri Tarkeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co. and Others, as to the definition of immovable property. In our opinion this case has absolutely no application to the facts of the case.

5. In the result, the writ petition is dismissed but without costs.

