(1995) 01 AHC CK 0103

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 896 of 1994

Olympic Petroproducts Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 06-01-1995

Acts Referred:
Central Excise Rules, 1944 — Rule 206(3)

Citation : (1995) 77 ELT 519

Hon'ble Judges : S.K. Verma, J;A.P. Misra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. In view of the undisputed facts, the present writ petition is being disposed of finally at the stage of admission in accordance with the rules of the court.

2. The petitioner seeks quashing of the seizure dated 23-8-1994 and further direction to the respondents to release the seized goods forthwith and provisionally. The case of the petitioner is that the petitioners are engaged in the manufacture of polyester Monofilament yarn falling under Chapter 5406.10 of the Central Excise Tariff Act, 1985. The Preventive Officers of the Central Excise Department visited the premises of the petitioner on 23-8-1994 and seized a truck alongwith Polyester Monofilament which was parked inside the factory premises. The allegation by the respondents is that on demand the driver could not produce the relevant excise papers. The officers also seized the excess stock of finished goods, that is to say. Polyester Monofilament yarn. The petitioner has also stated certain irregularities committed by the Preventive Officers during the said seizure but it is not necessary to advert the same in this case. The case set up by the petitioner is that since the truck was parked inside the factory premises and goods were being loaded, the seizure of the goods and the truck was not at all warranted in law. The further case of the petitioners is that the petitioners were working under the Self Removal Procedure and duty on each clearance is to be paid by making debit entry in the Personal Ledger Account

prior to the removal of the goods, outside the factory premises. The petitioner has challenged the seizure by stating that there was neither any shortage nor any excess. Thereafter the petitioner requested through letter dated 25-8-1994 for the provisional release of the seized goods in accordance with Rule 206(3) of the Central Excise Rules. Thereafter several reminders were sent. Since nothing happened, hence it left him with no option but to file the present writ petition for the aforesaid relief.

3. In paragraph 16 the petitioner has further averred that he is prepared to execute a bond and to deposit the necessary security and the duty will be paid as and when the goods are cleared from the Mills. According to the case of the Department, the Preventive Officers seized the said truck which was loaded with Polyester Monofilament yarn and on demand by the driver, he could not produce the duty paying documents. The case set up is that on physical verification of finished excisable goods lying in the factory premises, an excess of 2839.099 Kg. of polyester monofilament yarn of different grades of above 2000 denierage over and above the recorded balance were noticed and hence inference was drawn that excess goods found are contravened goods liable to confiscation and hence seized the same.

4. Regarding release of the said goods, as stated in the application made by the petitioner, the stand taken by the respondents is that, in fact, it is only the excess of finished goods which were found unaccounted for and have been seized. The Department on the basis of the application made by the petitioner requested his counsel to produce the documents of the Company and the Managing Director for recording his statement and for his cooperation in the investigation. For this several summons were sent to the Managing Director but he did not approach nor any cooperation was made. To this averment, learned counsel for the petitioner strongly urged that the averment is not correct and has wrongly been made. In fact, there were only two summons issued to the petitioner, the first one was received on a date subsequent to the date on which he was to appear before the authority concerned and on the second occasion on account of hypertension, namely, the health of the Managing Director he could not produce himself before the said officer concerned. In this regard it is significant that in the order dated 30-9-1994 which is Annexure 1 to the supplementary affidavit, the Assistant Collector (Preventive), Central Excise Act has recorded also to the same effect :-

"...that in the absence of compliance to summons of appearance and production of documents, provisional release of seized goods would hamper the investigation and party was likely to indulge in further evasion of duty, the provisional release of goods was not considered.

...Therefore, I feel constrained to disallow their request for provisional release at this stage. However, depending upon the progress of investigation and on consideration that further investigation is not likely to be hampered, their request will be reconsidered in due course."

5. Learned counsel for the petitioner also states that the petitioner is ready to cooperate and has in fact, also sent the documents concerned which the Department desires but we feel that the petitioner may appear before the concerned authority first on 16-1-1995 alongwith a certified copy of the order passed by us today. The petitioner will also, in case not already produced and if desired, produce the concerned documents in support of his case either by 16-1-1995 or may seek minimum time for producing the same as desired by the said authority. Thereafter the said authority will pass appropriate orders after giving opportunity to the petitioner by means of a speaking order preferably within a period of one month thereafter. The said authority apart from taking into consideration the facts and circumstances of the case will also, as urged by the learned counsel for the petitioner, take into consideration paragraph 43 of the Manual of Departmental Instructions on Adjudication. With the aforesaid observations, the present writ petition is finally disposed of.

A certified copy of this order may be given to the learned counsel for the petitioner within one week on payment of necessary charges.

