(2011) 01 KL CK 0136

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1377 of 2011 (V)

Paragon Steels Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise, Board of Central Excise and Customs and Union of India (UOI) RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Central Excise Rules, 1944 — Rule 96ZO
Central Excises and Salt Act, 1944 — Section 37

Citation : (2011) 01 KL CK 0136

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : N. Muraleedharan Nair, for the Appellant; John Varghese, S.C., Cen. Board of Excis, for the Respondent

Judgement

Antony Dominic, J.—The issue raised in these writ petitions are same and therefore these cases were heard and are disposed of by this judgment.

2. Petitioners are Assessees under the Central Excise and Salt Act. Admittedly duty payable by the Petitioners were paid by them belatedly. In such cases, Rule 96ZO of the Central Excise Rules framed u/s 37 of the Central Excise and Salt Act 1944, provides that the defaulter is liable for penalty. Accordingly, penalty was imposed on the Petitioners by Ext.P1 orders. Appeals filed against Ext.P1 were disposed of by the appellate authority upholding penalty. However,Tribunal reduced the penalty, which was confirmed by this Court in the appeals filed by the department. In the appeals filed by the Department, Apex Court passed Ext.P5 orders allowing the appeals following its earlier judgment in Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, . However, it was clarified that the order will not stand in the way of the Assessee challenging the vires of Rule 96ZO of the Central Excise Rules. It is taking advantage of the said liberty that these writ petitions have been filed challenging the vires of the said rules.

3. Contention raised by the counsel for the Petitioners is that the Rule does not give any discretion to the officer and therefore irrespective of the delay involved and irrespective of the guilt, the officer is mandatorily required to levy the penalty. This according to the learned Counsel is unconstitutional.

4. It is settled position of law that there is no equity in tax. Admittedly, Rule has been framed by the Central Government exercising its powers u/s 37 of the Central Excise Act, 1944. The statute does not require that any discretionary power should be confirmed on the officer. If that be so, it cannot be said that the rule is vitiated for any of the grounds available to invalidate a piece of subordinate legislation. In that view of the matter, I do not find any merit in the contention raised.

5. Counsel then contends that having regard to the financial constrains raised by the Petitioners, they should at least be permitted to pay the amount in easy instalments.

6. I heard the standing counsel appearing for the respondents also.

7. Taking note of the submissions thus made before me, I direct that it will be open to the Petitioners to pay the amounts due in five equal monthly instalments. The first instalment will be paid on or before 15th of February, 2011 and the subsequent instalments will be paid before 15th of every succeeding month. Needless to say that in case any default is committed, it will be open to the Respondents to initiate recovery proceedings as is permissible in law.

8. Subject to the above, the writ petitions are disposed of.