(1990) 01 KL CK 0044

In the High Court Of Kerala

Case No : Original Petition No. 309 of 1990-J

Priya Rubber Industries (P.) Ltd. APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 11-01-1990

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1990) 89 CTR 1 : (1990) 182 ITR 433 : (1990) 52 TAXMAN 15

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : T.L. Anantha Sivan, for the Appellant; P.K. Ravindranath Menon and N.R.K. Nair, for the Respondent

Judgement

K.A. Nayar, J.—In this writ petition, the petitioner wants to quash exhibits P-2, P-4 and P-5. On July 11, 1985, there was a search by the Central Excise Department and there was also a test production by the Central Excise Department on October 1, 1985. Thereafter the Central Excise Department imposed a duty of Rs. 52,79,885.08 and penalty of Rs. 12 lakhs. Aggrieved by the order of the Collector of Central Excise, the petitioner filed an appeal, viz., Appeal No. 111, . . . before the Customs, Excise and Gold (Control) Appellate Tribunal and stay was granted on condition of payment of Rs. 3 lakhs. Exhibit P-2 dated August 17, 1989, is a notice issued to the petitioner in which it is stated that the Income Tax assessments for the assessment years 1983-84 and 1984-85 have been set aside by the Commissioner of Income Tax (Appeals) by his order dated September 28, 1987, with a direction that the materials available with the Excise Department may be brought on record and that the assessee may be granted suitable and reasonable opportunities to explain the position either on the basis of the books maintained by the assessee or on the basis of conclusions drawn by the Department. The assessment for the year 1985-86 is also pending. Exhibit P-2 notice was issued by the respondent proposing to make additions in respect of the suppressed turnover for the various years, viz., 1983-84, 1984-85 and 1985-86, and the petitioner was directed to furnish details of salaries and wages, travelling expenses, rates and taxes, professional charges, insurance, repairs and maintenance and also confirmation in respect of secured loans and unsecured loans and sundry creditors. The petitioner submitted his reply to exhibit P-2, in exhibit P-3. It is stated in its objection that the Central Excise Collector has made a false statement and came to an erroneous conclusion and he has ignored certain relevant factors. The details have been given under the sub-heading "Onus of proof" in exhibit P-3. Ultimately, in the explanation petition, the petitioner also stated that all books of account and documents are with the Central Excise Authorities and that, therefore, the petitioner was not in a position to furnish the details. The objection of the petitioner has been considered by the Income Tax Officer by exhibit P-4 dated September 19, 1989. In exhibit P-4, the Income Tax Officer stated that the order of the Collector of Central Excise dated November 18, 1986, based on the data gathered by the Central Excise Authorities in connection with the raid conducted at the premises of the factory on July 11, 1985, is a very valid piece of information for the purpose of assessment till the same is modified by the appellate authorities. There were unaccounted purchases of raw materials found on the basis of the statements of the sellers of such raw materials. There was also excess stock of raw materials available at the time of the raid by the Central Excise Authorities. It is also pointed out that the discrepancies noticed are supported not only by the statements of the employees but also by the statements of the purchasers of the finished goods and sellers of the raw materials. In the circumstances, the Income Tax Officer informed the petitioner that the suppressed turnover calculated on the basis of the consumption of sulphur also compares favourably with the calculation of the suppressed turnover on the basis of the electricity consumed. He also informed that his request for keeping the assessments in abeyance cannot be conceded and he was directed to furnish the details called for in exhibit P-2 and thereafter the case was posted to October 5, 1989, at 10 a.m. On December 12, 1989, the respondent wrote to the petitioner by exhibit P-5 stating that the petitioner has not furnished the details called for. The petitioner was also informed that the case was posted to January 18, 1990, to give it a last chance and the case was earlier posted to November 30, 1989; and December 26, 1989, but the petitioner has not furnished the details. It is at that juncture that the petitioner filed this writ petition to quash exhibits P-2, P-4 and P-5 notices.

2. Exhibits P-2, P-4 and P-5 cannot be considered arbitrary, illegal or in any way vitiated. If the petitioner is not in a position to produce the books of account or any particulars or details, it is for the petitioner to so urge the same before the Income Tax Officer. If the documents are retained by the Central Excise Department, the petitioner can apply for certified copies of the same, and, for this purpose, it can make appropriate submission before the Income Tax Officer. Exhibits P-2, P-4 and P-5 do not call for interference at this stage under Article 226 of the Constitution. The matter is only at the notice stage. The assessee has a duty to co-operate with the Department. If any document called for is not

available to the petitioner because it is taken by the Central Excise Department, it is for the petitioner to take appropriate steps to get certified copies of the same. The appeal is pending before the Central Excise Collector and a stay was given by him. These matters will be considered by the respondent at the time of completing the assessment proceedings.

3. There is no merit in this writ petition. The original petition is dismissed.