(1993) 12 MAD CK 0076

In the Madras High Court

Case No : Writ Petition No. 2280 of 1987

R. Manickathammal APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 14-12-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (1994) 45 ECC 71

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanakaraj, J.—The petitioner is engaged in the manufacture of matches. She pays the excise duty under tariff item No. 38, of the Central Excise, under which a duty of Rs. 1.60 for every gross of 50''s matches, is payable. Under notification 22/82 issued under the Central Excise Rules, the petitioner had been availing of a concessional rate of duty because her manufacture and removal of matches was within the ceiling limit of 15 million matches per month. On the basis of certain verifications made by the officers of the respondents, it was noticed that there were alterations and erasures in the figures noted in the R.G.I Register. The case of the respondents is that those erasures and alterations were for the purpose of availing of the said notification No. 22 of 1982. Therefore, a show cause notice was issued by the third respondent stating that the R.G.I Registers which were corrected by the petitioner had been sent to the Forensic Science Laboratory and on the basis of their finding the original entries were deciphered. As per the original entries it was found that the production of matches during the months of March 1983, April 1983 and May, 1983 had exceeded the ceiling limit of 15 million matches per month. Therefore, a differential duty of Rs. 85,510/- was found payable and by invoking Section 11-A of the Central Excise Rules, the petitioner was asked to show cause as to why the differential duty should not be levied and penalty imposed for the correction of the registers. After getting the explanation of the petitioner and after conducting a proper enquiry the third respondent came to the conclusion that there was no sufficient evidence to disentitle the petitioner from getting the benefit of notification No. 22/1982 and that the correction of the registers were bona fide corrections. Therefore, the proposal to levy the differential duty was dropped. But the third respondent imposed a penalty of Rs. 2,000/- for the correction of the registers by invoking Rule 226 of the Central Excise Rules. The petitioner paid the penalty and accepted the order of the third respondent. But an appeal seems to have been filed by the Department, to the second respondent who by an order dated 4.12.19986, held that the differential duty as proposed in the show cause notice is payable by the petitioner because there was suppression of the facts and accordingly allowed the appeal. Even though against the said order of the second respondent a further appeal was maintainable, the petitioner has filed this writ petition for the issue of a writ of prohibition from taking further proceedings in pursuance of the order dated 4.12.1986 made by the second respondent. The writ petition having been admitted as early as on 10.3.1987 I am not inclined to dismiss the writ petition on the ground of availability of an alternate remedy.

2. The only question before me is whether the order of the second respondent can be sustained in law. Learned Counsel for the petitioner has taken me through the orders of the second and third respondents and argues that the second respondent has rendered findings based only on suspicion and not on the basis of any legal evidence. On the other had, learned Counsel for the respondents argues that there was sufficient evidence to disclose the original entries which were altered by the petitioners. The figures which constituted the original entries were deciphered by the Forensic Science Department. Therefore, it is argued that there is no reason why those figures should not be taken as correct figures and the duty imposed accordingly. I have carefully perused the orders of the second and third respondents. I will only refer to a few aspects of the case which will enable me to decide the case one way or the other. The opinion of the Director, Forensic Science Laboratory was not subject to any cross-examination by having the expert, examined before the third respondent. The explanation of the petitioner that the Accountant who made entries, was working for various manufacturing units and he had made bona fide mistakes in the R.G.I Register while taking the figures from the Cooly Registers. It was also pointed out that the officers of the respondents had checked the R.G.I. Register every month, when the return in R.T.3 form was filed. The R.G.I Register is the daily stock account prescribed by Rule 53 of the Central Excise Rules. R.T.3 form is the monthly return prescribed under Rule 54 of the Rules containing the periodical returns of the excisable goods manufactured by the unit. It was also pointed out that if the petitioner had any intention of concealing the production, she would make the corresponding alterations in Columns 4, 15 and 16 of the related R.G.I Register. In cross-examination of the Inspector of Central Excise, Kovilpatti, at the personal hearing, the said Inspector had to admit that he had personally verified the correctness of the returns submitted under R.T.3 form by comparing the

same with R.G.I Register. He had stated that he had no reasons to suspect the bona fide of the petitioner. On the above evidence and material available before the third respondent, the third respondent rightly came to the conclusion that the alteration no doubt create a suspicion. But the explanation of the petitioner that the mistakes were bona fide in nature was also acceptable. Therefore, he rightly came to the conclusion that for the alterations and erasures made in the R.G.I Register the petitioner is liable for penalty under Rule 226 of the Central Excise Rules. He therefore, imposed a penalty of Rs. 2,000/-.

3. This order of the third respondent which appears to be reasonable and in accordance with law, has been set aside by the second respondent giving certain reasons which appear to be totally unacceptable. According to the second respondent the petitioner ought to have informed the department when the mistakes committed by the Accountant were brought to her notice. He then says that from "the nature of the mistakes I find for both financial year they would have exceeded the limit of 15 millions matches produced per month". He also proceeds to say that in the register relied on by the petitioner correct figures had been disclosed. But according to him they could have always been prepared and re-written at any time. Again while concluding that there was suppression of facts because the petitioner had not intimated the department about the mistakes committed by her accountant., He relies on Rule 226 of the Central Excise Rules for holding the petitioner guilty. But the second respondent has ignored the fact that for an offence of making corrections and erasures in the R.G.I. Register a penalty is prescribed by the said Rule 226 and that has been imposed by the second respondent. There was absolutely no evidence to show that the petitioner had in fact, manufactured and removed a larger quantity of matches. There was absolutely no evidence to show that the figures as deciphered by the Forensic Science department were the correct figures. The corrections could have been bona fide as explained by the petitioner. There is no reason why the raw materials register should not be taken into account for coming to the conclusion that the correct figures are only the figures as disclosed after the corrections in the R.G.I Register. From the mere fact that there were corrections in the figures it is not proper to conclude that the original entries constitute the actual manufacture of matches. When there is a possibility that a correction could have been bona fide correction as stated by the petitioner, a levy of differential duty to the tune of Rs. 85,510/- is certainly not called for. Certainly such a levy cannot be based on mere suspicion without any legal proof. Learned Counsel for the petitioner has also relied upon the judgment of the Tribunal reported in 1990 (31) ECR 616 . While dealing with the similar situation the Tribunal observed as follows:-

In fact under the physical control system the day-to-day operations of the appellants'' manufacture and clearance are under close supervision of the central excise authorities and unless it can be shown that the officers were in collusion with the appellants it will have to be presumed that the operations of the appellants were found to be in conformity with the law.

There is no reason why the same rule should not be applied to the case of the petitioner.

4. For all the above reasons the writ petition is allowed and instead of the prayer sought for in the writ petition, a writ of certiorari is issued to quash the order of the second respondent dated 4.12.1986 and thus restoring the order of the third respondent dated 3.1.1986. There will however, be no order as to costs.