(1992) 12 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 12678 of 1990

Rane (Madras) Limited APPELLANT

Vs

Assistant Collector of Central Excise, II Division and Another RESPONDENT

Date of Decision : 14-12-1992

Acts Referred:

Citation : (1994) 45 ECC 166

Hon'ble Judges : Venkataswamy, J

Bench : Single Bench

Judgement

Venkataswami, J.—Aggrieved by the orders of the second respondent the present writ petition is filed by the petitioner.

2. As I propose to remit back the matter to the first respondent I am not setting out the facts in detail.

3. The point in dispute between the petitioner and the Revenue is whether the petitioner has accounted for the inputs sent outside the factory for processing in full as required under Rule 57-F(2) of the Central Excise Rules, 1944. According to the Revenue the petitioner has failed in that and therefore after issuing a show cause notice on 16.8.1989 a duty and also penalty amounting to Rs. 5,02,552/- was levied. Aggrieved by that he filed writ petition No. 14615 of 1989 mainly contending that he was not given full opportunity to place all the materials and before that the first respondent passed the order imposing duty and penalty. This Court by order dated 6.12.1989 permitted the petitioner to file a statutory appeal before the Collector, Customs (Appeals) with a direction to the appellate authority to give the petitioner reasonable opportunity to produce all the records and if the Collector (Appeals) considers that matter must be sent back, option was given to the Collector to send back the matter to the Assistant Collector. The Appellate Collector was directed to dispose of the appeal within a specified time on merits if he considers that he could pass orders after perusing the records to be produced by the petitioner. Accordingly, the petitioner filed an appeal on 8.1.1990. That appeal was taken up for final hearing on 28.5.1990 and final

order was passed by the second respondent on 22.6.1990 confirming the duty but reducing the penalty already levied by the first respondent. Aggrieved by that, the present writ petition has been filed.

4. Mr. Sriram Panchu, learned Counsel for the petitioner mainly submitted that before the appellate authority all the relevant records were produced. However, the appellate authority was not inclined to go into the same, instead he observed that he will look into the order of the Assistant Collector and pass appropriate orders. Thinking that the appellate authority will remit the matter, the petitioner took back all the records and he was later on served with an order confirming the duty but reducing the penalty . According to the learned Counsel, the appellate authority has not complied with the direction given by this Court in spirit. Therefore, the order should be set aside.

5. On the other hand Mr. K. Jayachandran, learned Counsel for the Revenue states that all opportunities were given and after perusing the records produced before the appellate authority he has passed the order and the petitioner could have filed a statutory further appeal to the Tribunal, instead he has filed the present writ petition. He also submitted that the appellate order gives valid reasons for coming to the conclusion and that does not call for any interference.

6. I have considered the rival submissions. In paragraph Nos. 16 and 17 of the affidavit filed in support of the writ petition it has been elaborately stated what are all the records taken before the appellate authority apart from the records already filed. The grievance of the petitioner is that the appellate authority did not look into the records, instead he gave an impression that he will pass appropriate orders which the petitioner thought could be an order of remit and on that ground he took back all the records. Ultimately the appellate authority confirmed the duty and reduced the penalty without looking into the records. On a perusal of the order in Writ Petition No. 14615 of 1989 Rane (Mds) Ltd. by Director of Chief Executive v. Asst. Collector of Central Excise, Madras-H Division, Madras-34. I find the learned Judge has given a clear direction to the appellate authority to look into all documents by himself or to remit the matter to the Assistant Collector to look into the records and pass final orders. But the appellate authority has passed orders only on the basis of records partly available before him, and therefore, it cannot be said that the order of this Court has been fully complied with. The fact remains that the petitioner has in his possession voluminous records to produce before the authorities to substantiate his case. That must be gone into by the authorities before confirming the duty and penalty impugned in these proceedings. Two courses are open to this Court in these circumstances. One is directing the petitioner to file a statutory appeal before the Tribunal and directing the Tribunal to peruse the records to be produced by the petitioner and pass orders. The other course is after setting aside the orders of both the respondents directing the first respondent to look into the records to be produced by the petitioner and pass orders in accordance with law. Of the two courses, I consider the latter one will serve the interest of

both parties. Accordingly, I set aside the orders of the Assistant Collector confirmed by the appellate authority and direct the Assistant Collector, first respondent herein to restore the case on his file and to look into the matter once again. The petitioner is given four weeks time to produce all the records before the Assistant Collector and thereafter, the Assistant Collector will pass orders after fixing a date and after giving a personal hearing and in the light of the arguments to be advanced and also in the light of the materials available in the records to be produced by the petitioner.

7. It is stated pending writ petition the petitioner has been directed to pay half of the amount as decided by the appellate authority. Now I have set aside the orders of the Assistant Collector and that of the appellate authority. There is a possibility of the petitioner asking for the refund of the amount to be paid to him. I direct the petitioner not to insist upon the refund of the amount already paid pending disposal of the writ petition, till the disposal of the case by the Assistant Collector on remand. The Assistant Collector will pass orders within three months from this date, after complying with the directions as given above. The amounts paid by the petitioner towards duty and penalty if any, will be appropriated subject to the result of the orders to be passed by the Assistant Collector. The appropriation or refund will be in the light of the orders to be passed by the Assistant Collector. The writ petition is allowed accordingly. No costs.

This writ petition having been set down this day for being mentioned in the presence of the said Advocates, the court made the following Order:

Venkataswami, J.

8. This is posted for being mentioned, for clarification. No clarification is necessary. The order already passed stands.

