

(2002) 02 AP CK 0145

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 460 of 2002

Rockwool (India) Limited

APPELLANT

Vs

Deputy Commissioner (Legal), Central Excise and Others

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Central Excises and Salt Act, 1944 — Section 9, 9(1)
Penal Code, 1860 (IPC) — Section 120

Citation : (2002) 1 ALT(Cri) 546 : (2003) 156 ELT 325

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : N. Narahari, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—This petition is filed to quash the proceedings in C.C.No.288 of 2001 on the file of the Court of the Special Judge for Economic Offences, Hyderabad.

2. The case of the prosecution is that the petitioner, who is the manufacturer of Rockwool Products, falling under the heading No.6803.00, had, consequent on the change in 1991-92 budget, came under Excise Control. On 8-8-1991 petitioner filed a classification list classing their products under the Heading No.6803.00 and the same was confirmed by the Department. The notification dated 20-3-1990 was withdrawn on 25-7-1991 and simultaneously Notification No. 60/91-C.E. dated 25-7-1991 was issued exempting the goods falling under Chapter No.68 containing 25% or more by weight of Fly Ash or Phosphogypsum or both from the whole of duty of excise. The petitioner in its classification list dated 4-9-1991 read with the earlier letter dated 20-3-1990, claimed exemption for all the goods manufactured by it in terms of notification No. 60/91-C.E. dated 25-7-1991 on the ground that their goods contained 25% by weight of Fly Ash, which was provisionally approved. When a sample was drawn and was sent for chemical analysis by the Chemical Examiner, Customs House, Madras, he, by his

report dated 6-4-1992, stated that the Fly Ash content is 30%. Hence the Assistant Commissioner of Central Excise extended the benefit of the notification No. 60/91-C.E. dated 25-7-1991 with effect from 4-9-1991. Questioning which the Department filed an appeal which was allowed. On further appeal by the petitioner, the CEGAT by its order No.2372/96 dated 15-11-1996 set aside the order of the Commissioner (Appeals) and remitted the case for de novo consideration. Subsequently the Department took up investigation based on the intelligence gathered that petitioner was not using Fly Ash in the manufacture of its products and that it is evading payment of duty by wrongly availing the benefit of Notification No. 60/91-C.E. dated 25-7-1991, and found that the records of the petitioner were manipulated as if they purchased Fly Ash from some concerns, which are not in existence, because the A.P.G.S.T. and C.S.T. numbers of those concerns, appearing on invoices, on verification, were found to have been closed from 1-4-1987 itself, and as the numbers of the vehicles mentioned therein, on verification were found to have been re-assigned some other registration numbers, and were shifted from Tamil Nadu and the registration number of some vehicle is wrong, and thus the petitioner, by creating fictitious documents relating to supply of Fly Ash, and by mis-declaring Andesite as fly ash, to cover up the non-usage of fly ash, had falsified his accounts and evaded duty in conspiracy with its officers, is liable for punishment u/s 9(1)(c) read Section 9(aa) of Central Excise Act, 1944 read with Section 120B I.P.C.

3. The contention of the learned counsel for the petitioner is that against the order passed by the Commissioner, Central Excise (Appeals), Bangalore dated 23-8-1996, the petitioner filed an appeal before the CEGAT, which set aside the order of the Commissioner (Appeals) and remitted the matter for re-examination in the light of the observations made by it, and the Commissioner of Central Excise (Appeals) by his order dated 21-12-1999 instead of deciding the matter as directed by the CEGAT remanded the matter to the Assistant Commissioner of Central Excise, and against that order, petitioner filed an appeal before the CEGAT seeking a direction to the Commissioner of Central Excise to decide the matter, and that in the meanwhile Commissioner of Central Excise issued a notice to the petitioner that it is not entitled to exemption under the Notification No. 60/91 and to show cause why duty should not be demanded, for which the petitioner sent a detailed reply, and without providing an opportunity of personal hearing and to cross-examine the witnesses, Commissioner of Central Excise passed orders on 28-11-1997 demanding payment of duty and penalties from the petitioner, against which an appeal was filed before the CEGAT, and on a petition for stay, the CEGAT stayed the operation of the order of the Commissioner of Central Excise dated 28-11-1997 and so the prosecution, launched during the pendency of the appeal, is premature and hence it is liable to be stayed till the disposal of the appeal by the CEGAT, if not being liable to be quashed. It is the contention of the learned counsel for the petitioner that the issue for decision before the CEGAT and in the criminal petition is one and the

same, and if ultimately the CEGAT were to allow the appeal of the petitioner, the question of liability of the petitioner to pay duty does not arise, and so the criminal proceedings are liable to be quashed. He placed reliance on COMMISSIONER OF INCOME TAX, MUMBAI vs. BHUPERN CHAMPAK LAL DALAL AND ANOTHER¹ where it is held that if the question for consideration before the Income Tax authorities has a direct bearing on the criminal proceedings under the Income Tax Act, it would be appropriate for staying the criminal proceedings till the disposal of the appeal before the Income Tax authorities; and SHRI DIGVIJAY CEMENT CO. LTD. vs. STATE OF GUJARAT² where it is held that when the order of the Collector levying duty and imposition of penalty is appealed against and stay was obtained, criminal proceedings for non-compliance with the order of the Collector during the pendency of the appeal before the Tribunal are liable to be stayed till the disposal of the appeal; ROSHANLAL AGARWAL vs. DY.CHIEF CONTROLLER OF IMPORTS AND EXPORTS³ where it is held that Special Court for Economic Offences is but a Court of a Judicial Magistrate of First Class established to try offences under the Acts specified in Schedule to Notification No. LAW 106 LCE 79 Bangalore, which does not contain I.P.C. and so the Special Court, not being empowered to try offences under the Indian Penal Code, cannot try the offence u/s 120B I.P.C. mentioned in the charge sheet, and SWATHY CHEMICALS LTD. vs. UNION OF INDIA⁴ where it is held that prosecution on the same facts on which the Tribunal held against the Department is not sustainable and contended that in the event of the CEGAT allowing the appeal preferred by the petitioner, the findings of CEGAT would be binding on the Department and so the prosecution against the petitioner during the pendency of the appeal filed by the petitioner before the CEGAT is not sustainable.

4. The contention of the learned Standing Counsel for the respondents is that the subject matter of appeal before CEGAT and the subject matter of the criminal proceedings are entirely different and so there is no need to stay or quash the proceedings. He placed reliance on K.NEELAKHANTA RAO AND ANOTHER vs. STATE OF A.P.⁵; VANAMALA JAGDEESWARAIAH AND ANOTHER vs. DEPUTY COMMISSIONER (LEGAL) CUSTOMS & CENTRAL EXCISE⁶ and COLLECTOR vs. PARDIP PORT TRUST⁷.

5. Before considering the merits of the contentions raised by the counsel for parties, it is necessary to have a look at Section 9(1) of the Central Excise Act, which lays down that failing to supply information or furnishing false information in relation to an information required by Rules made under the Excise Act is an offence punishable as mentioned therein. Therefore, it is clear that as per Section 9(1)(c) supplying false information and evading payment of duty penalty under the Act, are offences punishable under the Central Excise Act. If the offence alleged against the petitioner is that it is evading to pay the duty levied by the Commissioner in his order, which was stayed by the CEGAT, there is any amount of force in the contention of the learned counsel for the petitioner that the prosecution is premature and so is liable to be stayed till the final disposal of the proceedings before the CEGAT. In the complaint in this case there is a

specific allegation that the petitioner created fictitious supplies of fly ash and misdeclared Andesite as fly ash and steel, to cover non-usage of fly ash and misdeclared Andesite Steel slag, and hence he is liable for punishment u/s 9(1) (c) of the Central Excise Act. The question as to whether the petitioner created fictitious supply of fly ash and misdeclared Andesite as fly ash and slag, to cover up non-usage of fly ash and Steel Slag is not the subject matter of determination by the CEGAT. The prosecution is not launched merely on the ground that the petitioner failed to pay the amount of duty as determined by the Commissioner, whose order is stayed by the CEGAT. Therefore, I am unable to agree with the contention of the learned counsel for the petitioner that the issue before the CEGAT and the issue to be decided by the criminal Court are the same. The question as to whether the provisions of I.P.C. apply to Special Court for Economic Offences or not can be decided by the learned Special Judge himself. If the petitioner feels that the provisions of I.P.C. cannot be taken cognizance of by the learned Judge, it is at liberty to bring that fact to the notice of the Special Court.

6. The learned counsel for the petitioner, brought to my notice that in the show cause notice issued by the Department to the petitioner there is reference about the non-payment of duty, and on this basis contended that the subject matter of the appeal before the CEGAT and the criminal Court is one and the same, I am unable to agree with the said contention. Merely because there is a reference to non-payment of duty in the show cause notice it does not mean that the prosecution in this case is for non-payment of the amount, which was stayed by the CEGAT. What is stayed by the CEGAT is the collection of the duty levied by the Commissioner only. Therefore, the fact of the CEGAT staying the collection of the duty determined by the Commissioner is not and cannot be a bar for the criminal Court taking cognizance of an offence of "supplying false information" to the Department. Since petitioner can raise the same contention before the trial Court, Roshan Lal case (3 supra) is of no help to the petitioner. Since the prosecution is not for non-payment of duty, but is for supplying false information, SHRI DIGVIJAY CEMENT CO. LTD. case (2 supra) and COMMISSIONER OF INCOME TAX, MUMBAI case (1 supra) have no application to the facts of this case.

7. Therefore I find no grounds to quash or stay the proceedings in CC.No.288 of 2001 till the disposal of appeal before the CEGAT. Hence the petition is dismissed.