(1979) 04 CAL CK 0019

In the Calcutta High Court

Case No : Application dated 30-9-1977 for contempt of court

Sanatam Mitra APPELLANT

Vs

Collector of Central Excise and Others RESPONDENT

Date of Decision : 12-04-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1982) 10 ELT 320

Hon'ble Judges : Murari Mohan Dutt, J

Bench : Single Bench

Advocate : Arun Prokash Sarkar, for the Appellant; N.C. Chakraborti and P.N. Chunder, for the Respondent

Final Decision : Dismissed

Judgement

Murari Mohan Dutt, J.—This is an application for contempt and it has been filed by the petitioner who succeeded in the Rule, being Civil Rule No. 1197(W) of 1973 which was issued at the instance of the petitioner on his application under Article 226 of the Constitution.

2. The petitioner is a manufacturer of electric fans and blowers with and without electrical device. The blowers without any electric device were not liable to excise duty under Item No. 33 of the schedule to the Central Excises and Salt Act, 1944 till June 30, 1971 when the said item was amended. The petitioner felt aggrieved by the action of the respondents is not refunding to him the excise duty charged and realised by them on the blowers manufactured by the petitioner without electrical device. The Rule Nisi was made absolute by me and it was directed that if any excise duty had been realised from the petitioner in respect of the blowers manufactured by him, which were without any electrical device, the respondent should refund such duty to the petitioner as claimed by him. It was made clear that the petitioner would not be entitled to claim refund of duty realised by the respondents on blowers with electrical device or electrically operated. Further, it was directed that the respondents should not also charge any excise duty on

blowers without any electrical device or which were not electrically operated.

3. In this application for contempt, it has been alleged that after the disposal of the said Rule, the petitioner made an application for refund of Rs. 1,34,017.80 paid by the petitioner as Central Excise duty on Industrial blowers (fans) manufactured by the petitioner without any electrical device, to the respondent No. 2 who is the proper authority to deal with such application for refund. The respondents, however, did not pay any heed to the petitioner''s claim for refund and, accordingly, the petitioner has filed this application for contempt against the respondents Nos. 1 and 2 who are the Collector of Central Excise and the Assistant Collector of Central Excise.

4. Mr. Nani Kumar Chakraborti, learned Advocate appearing on behalf of the respondents submits that as the petitioner had manufactured blowers with electrical device, he was not entitled to any refund of duty in terms of the order passed in the Rule. It has been already stated that by the said order it was directed that if any excise duty had been realised from the petitioners in respect of blowers manufactured by him which were without any electrical device, the respondents should refund such duty to the petitioner as claimed by him. It is not disputed by the petitioner that the blowers in question manufactured by the petitioner contained arrangements for being operated electrically. It is, however, contended by Mr. Sarkar, learned Advocate appearing on behalf of the petitioner that as the blowers were sold without any electrical motor fitted to them, they should not be regarded as blowers with electrical device. According to him the end products of electric blowers (fans) are blower fitted with electric motors. A blower without such electric motor is merely a component part of a blower having electrical device. I am, however, unable to accept the contention made on behalf of the petitioner. By the order passed in the said Rule it was meant that any blower having an electrical device, on in other words, a blower containing arrangements for being operated electrically, would be liable to excise duty. The dictionary meaning of the word "device" is plan, scheme, trick, contrivance, invention, thing adopted for a purpose, drawing, design or figure. The most suitable meaning which applies to the word,''device''is used in the order is ''scheme''. Therefore a blower without any scheme for being operated electrically will be exempted from excise duty. It is not disputed by the petitioner that he also manufactures blowers which can only be operated by hand. There can be no doubt that such blower are exempt from excise duty but the blowers which can be operated electrically are, as per my judgment, not exempt from such duty even though their operation will depend on their being fitted with electric motors.

5. In the circumstances, I do not think that the respondents have violated my order passed in the said Rule, for the blowers in respect of which duty has been realised are blowers with electrical device. The application for contempt is, accordingly, dismissed, but there will be no order for costs.