(2011) 12 AHC CK 0479

In the Allahabad High Court

Case No : Writ Tax No. 1669 of 2011

Sandeep Gupta APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Citation : (2017) 345 ELT 79

Hon'ble Judges : R.K. Agrawal and B. Amit Sthalekar, JJ.

Bench : Division Bench

Advocate : Shri Gopal Verma, H.M.B. Sinha and Pradeep Jain, Counsels, for the Petitioner; Shri S.P. Kesarwani, SSC, for the Respondent

Final Decision : Disposed Off

Judgement

1. By means of the present writ petition, the petitioner seeks a writ, order or direction in the nature of certiorari quashing the order dated 17-3-2011 filed as Annexure 9 to the writ petition as also seeking a writ of mandamus commanding the respondents to release the goods seized under Panchanama dated 27-10-2010 filed as Annexures 1 & 2 to the writ petition.

2. Briefly stated, the facts giving rise to the present writ petition are as follows.

3. The petitioner is the proprietor of the firms M/s. Sandeep Manufacturing Strips (a manufacturing unit) and M/s. Sandeep Metal Supply (a trading company). The manufacturing unit is situated at Loni, Ghaziabad whereas the trading unit is situated at Chawri Bazar, Delhi. The two units of which the petitioner is the proprietor is engaged in manufacturing and trading respectively of copper items falling under Chapter Heading 74 of Central Excise Tariff Act, 1985. A search was conducted in the premises of M/s. Sandeep Manufacturing Strips, Loni, Ghaziabad and the goods were seized/detained vide Panchanama order dated 27-10-2010. The business premises of M/s. Sandeep Metal Supply was also searched and the goods were seized/detained vide Panchanama of even date.

4. The contention of the petitioner is that there was no illegality in the business

activities of the petitioner and, therefore, the search and detention effected on 27-7-2010 was illegal. The detention order is liable to be lifted.

5. It appears that a show cause notice was issued by the Directorate General Central Excise Intelligence, New Delhi on 25-1-2011 calling upon the petitioner to show cause as to why the items of copper seized from the premises of M/s. Sandeep Metal Supply weighing 5317.11 Kgs. and valued at Rs. 1,91,43,040/- be not confiscated under Rule 25 of the Central Excise Rules, 2002 and further 4522 Kgs. of Copper ingots, 4413 Kgs. of copper strips seized from the factory premises of M/s. Sandeep Metal Strips, Loni, Ghaziabad be also not confiscated under the aforesaid Rules. A sum of Rs. 22,42,584/- towards Central Excise duty and Rs. 44,852/- as Education Cess and Rs. 22,426/- as Higher Education Cess be not demanded and recovered under Section 11A(1) of the Central Excise Act, 1944. Interest, penalty and seizure of vehicle as also penalty for abetting for commission of the offence be not imposed. Vide letter dated 17-2-2011, the Additional Commissioner, Central Excise Commissionerate, Ghaziabad had informed that the seized goods can be released provisionally after completing the prescribed formalities i.e. after execution of the B-11 Bond equal to the value of goods seized backed by security equal to 25% of the Bond amount.

6. We have heard Sri H.M.B. Sinha, learned counsel for the petitioner and Sri S.P. Kesarwani, learned Senior Standing Counsel appearing for the Respondents No. 1 & 2.

7. Sri Sinha, learned Counsel submitted that the petitioner is prepared to deposit the amount of excise duty and penalty which may be imposed on the seized goods and, thereafter, the seized goods be released. A further plea has been raised that the respondents are not supplying the legible copies of the relied upon documents in the show cause notice and, therefore, the petitioner is not in a position to submit the explanation/reply. He submitted that on account of the seizure of the goods, the petitioner''s business is being adversely effected.

8. Sri Kesarwani, learned Counsel submitted that regarding the grievance of not providing the legible copies of the relied upon documents, the same does not hold good, as on 19-12-2011, the legible copies of all the relied upon documents has been given to the petitioner. Photostat copy of the acknowledgement given by Sandeep Gupta, the proprietor has also been produced. This fact has not been disputed by the learned Counsel for the petitioner. Thus, the grievance of not supplying of legible copies of relied upon documents no longer exist.

9. So far as the question of release of the seized goods are concerned, we may mention here that in the show cause notice dated 25-1-2011, the Directorate General of Central Excise Intelligence, Delhi had specifically asked the petitioner to show cause as to why the goods seized from the premises of M/s. Sandeep Metal Supply and M/s. Sandeep Manufacturing Strips be not confiscated. Adjudication proceedings are yet to be finalised. If ultimately, the authority comes to the conclusion that the seized goods are liable to be confiscated, then

in the discretion of the adjudicating authority, an option can be given to the offending party to redeem it on payment of certain amount. What would be that amount at present is only a guess which we are not inclined to make.

10. The submission of Sri Sinha that the seized goods may be released on deposit of the amount of Excise duty which is likely to be levied, if accepted at this stage even when the adjudication proceedings are yet to be completed would set at naught the statutory provisions which provides for confiscation of seized goods and its release on payment of redemption amount. We may mention here that the duty, and penalty which may be imposed is in addition to the confiscation of goods, if ordered and is not in lieu thereof. That being the position, we cannot direct the release of seized goods on payment of Excise duty and penalty, which may be imposed.

11. We may observe here that the adjudication proceedings are pending since 25-1-2011. For one reason or the other, it has been held up. As the legible copies of relied upon documents has already been supplied to the petitioner on 19-12-2011, we direct the petitioner to submit his reply/explanation within a period of one month from today and the Respondent No. 1 or the authorised officer, who had issued the notice dated 25-1-2011 shall pass the final order in accordance with law within one month thereafter.

12. So far as M/s. Vasudev Udyog and M/s. Mayank Metal are concerned they are not before us and, therefore, we are not passing any order in respect of these two firms. The authorities may proceed in accordance with law.

13. With the aforesaid observations, the writ petition stands disposed of.