(2001) 07 AP CK 0091

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8602 of 2001

Sanghi Polyesters Ltd. APPELLANT

Vs

Commr. of C. Ex. RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:
Central Excise Rules, 1944 — Rule 173(G), 49

Citation : (2002) 79 ECC 542 : (2001) 134 ELT 344

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : G. Mohan Rao, for the Appellant; L. Narasimha Reddy, S.C.C.G., for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The Deputy Commissioner of Central Excise, Hyderabad-III Division, the 2nd respondent herein, by his proceedings dated 29-1-2001 withdrew the facility of payment of duty on fortnightly basis earlier granted to the petitioner on the ground of default in the matter of payment for 3 fortnights within a period of one financial year. The said order was assailed before the Commissioner of Customs and Central Excise (Appeals), Hyderabad. The appellate authority also by its Order No. 57/2001 (II-III) C.E., dated 23-4-2001 dismissed the appeal and upheld the order of the Deputy Commissioner. Hence, this writ petition assailing the validity of the order of the Commissioner of Customs and Central Excise (Appeals) dated 23-4-2001.

2. The question that arises for decision falls within a short compass. There is no controversy that only if the petitioner commits 3 defaults within a period of one financial year in the matter of payment of duty, then only it would authorize the Deputy Commissioner of Central Excise, the 2nd respondent herein, to withdraw the facility under Rule 49 read with Rule 173 (G) of Central Excise Rules. Therefore, what should be seen at the threshold is whether the above condition precedent to invoke the power under Rule 49 read with Rule 173 (G) of the Rules

existed in this case on the date of Deputy Commissioner passed the order on 29-1-2001. In the appellate order, the alleged defaults committed by the petitioner are set out which reads -

Fortnight Due date Date of presen- Date of release Remarks Ending tation of of TR6 Challan cheque in Bank by Bank 30-9-2000 5-10-2000 Paid part of the amount on 5 10-2000. Bal ance amount was paid on 20- 10-2000 along with interest 31-10-2000 5-11-2000 4-11-2000 8-11-2000 15-11-2000 20-11-2000 20-11-2000 21-11-2000 (After banking hours) 30-11-2000 5-12-2000 Not relevan 15-12-2000 20-12-2000 20-12-2000 23-12-2000 31-12-2000 5-1-2001 Paid partly on 5-1-2001. Bal- ance paid with interest on 31 3-2001. 3. As could be seen from the above table itself, the petitioner presented cheques on 4-11-2000, 20-11-2000 and 20-12-2000 towards the duty for the periods ending 31-10-2000,15-11-2000 and 15-12-2000 respectively. In respect of these 3 periods, the due dates were 5-11-2000, 20-11-2000 and 20-12-2000. The narration of the above facts would clearly show that the petitioner presented the cheques on or before the due dates and they were said to have been realised subsequently. The 2nd respondent taking the date of realisation of the cheques as the date of payment, came to the conclusion that the petitioner committed default and so opining passed the impugned order on 29-1-2001 under Rule 49 read with Rule 173 (G) of the Rules.

4. This Court had an occasion to deal with the question whether the date on which the cheque is received should be treated as the date of payment or the actual day on which the cheque is realised should be taken to be the date of payment in K. Venkata Reddy Vs. Commissioner of Income Tax, A.P.II, Hyd. and another, . The Court opined that the date of receipt of the cheque should be treated as the date of payment of duty. If that ratio is applied to the facts of this case, when the petitioner presented the cheques to the authorized bank on 4-11-2000, 20-11-2000 and 20-12-2000, it should be held that it made the payment of duty on 4-11-2000, 20-11-2000 and 20-12-2000 respectively i.e., to say on or before the due dates. If the payment of duty in respect of the aforementioned 3 periods is excluded, the petitioner should be held to have committed only 2 defaults and the 2nd respondent cannot invoke his power under Rule 49 read with Rule 173 (G) of the Rules on the ground that the petitioner committed two defaults.

5. However, Mr. L. Narasimha Reddy, the learned Senior Standing Counsel for Government of India would point out that the petitioner has committed default to the tune of Rs. 4.75 Crores subsequently which fact was seriously disputed by the learned Counsel for the petitioner company. There is no necessity for us to go into this factual controversy in order to decide the lis brought before this Court in this writ petition. If the petitioner has subsequently committed default, it would warrant cancellation or withdrawal of the facility as envisaged under Rule 49 read with Rule 173 (G) of the Rules and it is always open for the respondents to invoke that power and to withdraw the facility in accordance with law. We do not

want to express any opinion in that regard. We keep that question open.

6. In the result and for the foregoing reasons, we allow this writ petition and quash the impugned order. No costs.

7. That Rule Nisi has been made absolute as above.

