(1978) 01 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 576 of 1976

Satya Narain Agarwal and Another — APPELLANT

Vs

The Government of India and Others — RESPONDENT

Date of Decision : 18-01-1978

Acts Referred:

Citation : (1978) 2 ELT 476

Hon'ble Judges : Satish Chandra, J;R.R Rastogi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Chandra, J.

1. Petitioner No. 1, the sole proprietor of the firm M/s T.M. Industries Varanasi, manufactures aluminium conductors and cables The firm was registered under the Small Scale Industries Scheme, because its initial investment was below Rs. 7,50,000/- On 1st June, 1970, the Central Government issued a notification under the Central Excises and Salt Act, 1944, laying down 4% ad valorem excise duty on winding wires made of aluminium and 12% on all electric wires and cables, in cases where "an officer. not below the rank of Assistant Collector of Central Excises satisfied that the capital investment on plant and machinery duly installed therein, as or the date of the initial installation, is not more than Rs. 7,50.000/- On 2.08.1970, the petitioner addressed a letter to the Assistant Collector, Varanasi, that petitioner''s initial investment being much below Rs. 7,50,000/, he was liable to pay duty at 4% and 12% ad valorem only under the notification dated 1.06.70. He in order to satisfy the Collector, sent a certificate from a Chartered Accountant to the effect that the petitioner''s initial investment was much below Rs. 7,50,000/- On 4.11.1970, the Assistant Collector, Central Excise, replied that the petitioner should send a certificate to the Director of Industries, U.P. to show that the initial investment was below Rs. 7,50,000/- and that the petitioner''s unit is registered under the Small Scale Industries Scheme. The petitioner complied with this and furnished the requisite certificate from the

Director of Industries. On 12th May, 1971 however, the Assistant Collector informed the petitioner that the certificate issued by the Director of Industries was not properly worded and that he should submit another certificate. On 2-06-1971, the petitioner submitted the desired certificate. Thereupon, the Assistant Collector was satisfied that the petitioner''s initial investment was below Rs. 7,50,000/-and that the petitioner''s unit was registered under the Small Scale Industries Scheme.

2. The Assistant Collector, however, permitted the petitioner to pay excise duty at the rate of 4 per cent and 12 per cent ad valorem only since June 1971. He took the view that since he was satisfied only on the date, the lower rate of duty was admissible from that date onwards. In paragraph 10 of the counter-affidavit, this stand has been reiterated. It has been stated the petitioner claimed exemption on the ground that his investment was below Rs. 7,50,000/-but the relevant material in this regard was filed before the Assistant Collector only in June 1971. The petitioner was, therefore, charged with excise duty at the rate of 5% upto may 1971. On 6th April 1972 the Excise Department intimated to the petitioner that a sum of Rs. 9,040.09 was due and payable by the petitioner as deficiency of excise duty. This shows that a sum of Rs. 5/-was due for the month of February 1970 whereas diverse amounts were due from October, 1970 to May, 1971. The demand of Rs. 5/- for the amount of February 1970 may be kept apart as it is apparent that the shortfall for the period October, 1970 to May, 1971 was computed on the basis that the petitioner was liable to pay duty at the rate of 5% and 15% ad valorem. This shows that it was based on the view that the lower rate was applicable only from the date of the satisfaction of the Assistant Collector.

3. The lower rate, viz. 4% and 12% was applicable from the date of the notification, viz. 1st June, 1970. There is nothing in the notification indicating that the exemption will be applicable only from the date of the satisfaction of the Assistant Collector. The taxable event contemplated by this notification was that on the date of the initial installation of the plant and the machinery, the capital investment is not more than Rs. 7,50,000/- The Assistant Collector had to be satisfied that on the date of the initial installation the capital investment was below Rs. 7,50,000/-. The date on which he was actually satisfied or the time which he takes in arriving at the satisfaction are wholly immaterial to the liability of the factory to excise duty. Once the satisfaction has been reached the unit is liable to pay at the rate of 4% and 12% with effect from 1st June, 1970. The respondents were in error in committing any shortfall.

4. The petition hence succeeds and is allowed. The demand for the shortfall for the period October, 1970 to May, 1971 computed on the footing that for this period the petitioner was liable to pay at the rate of 5% and 15% ad valorem is quashed. The petitioner would be entitled to costs.

