(1986) 08 AHC CK 0062

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 629 of 1986

Shree Baidyanath Ayurved Bhavan Private Limited — APPELLANT

Vs

Collector of Central Excise and Another — RESPONDENT

Date of Decision : 12-08-1986

Acts Referred:
Central Excise Rules, 1944 — Rule 206(3)

Citation : (1987) 13 ECR 396 : (1986) 26 ELT 501

Hon'ble Judges : R.R. Misra, J;N.D. Ojha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—The petitioner has been manufacturing ''Dant Manjan Lal'' and a question seems to have been raised as to whether excise duty was payable thereon or not. An order was passed by the Assistant Collector of Central Excise, Allahabad on 25th August, 1981 that excise duty was payable. Against this order an appeal was preferred by the petitioner which was allowed by the Collector (Appeals) Central Excise on 27th July, 1983 and the matter was remanded to the Assistant Collector, Central Excise for decision afresh in the light of the observations made in the Order of remand. The Assistant Collector of Central Excise decided the matter in pursuance of the order of remand on 19th February, 1986. A writ petition being writ petition No. 253 of 1986 was filed by the petitioner in this Court asserting that the adjudication dated 19th February, 1986 was bad inasmuch as the petitioner had not been given any opportunity of hearing before passing the said order. The writ petition was allowed by this Court on 21st May, 1986 and the Assistant Collector, Central Excise was directed to decide the matter afresh after hearing the petitioner. The Assistant Collector, Central Excise has thereafter decided the matter again after hearing the petitioner on 4th July, 1986. It is this order dated 4th July, 1986 which is sought to be quashed. The other prayer made in the writ petition is that a direction may be issued to the Assistant Collector, Central Excise to release certain quantity of

''Dant Manjan Lal'' which was seized, against a bank guarantee amounting to Rs. 50,000/-.

2. As regards the relief for quashing the order dated 4th July, 1986 Shri R.N. Bhalla, counsel for the petitioner has made a statement that the petitioner shall pursue the alternative remedy of preferring an appeal against that order and the said relief was not being pressed in the present writ petition. As regards the second relief certain more facts are necessary to be stated here. On the view that the excise duty was payable on ''Dant Manjan Lal'' and that the same had not been paid in regard to a certain quantity of ''Dant Manjan Lal'', the said goods were seized on 17th February, 1986. The petitioner wrote letters dated 8th June, 1986 and 20th June, 1986 to the Assistant Collector of Central Excise, Allahabad requesting for release of the seized goods. In reply to these letters the Assistant Collector, Central Excise sent a letter dated 14th July, 1986 a copy whereof has been attached as Annexure-10 saying that the attention of the petitioner was invited to letter dated 26th February, 1986 issued from his office and that if the petitioner was really interested in the provisional release of the said goods he should do the needful as required by the said letter dated 26th February, 1986. A copy of the letter dated 26th February, 1986 has been attached as Annexure 11 to the writ petition. This letter purports to contain an order dated 26th February, 1986 passed on an earlier application of the petitioner dated 18th February, 1986 for release of the goods. By this letter the petitioner was required to execute a bond for Rs. 5,18,949/- with a cash security amounting to Rs. 1,30,000/- in the shape of post office savings bank account for provisional release of the seized goods. The petitioner was also required to deposit the excise duty leviable on the seized goods.

3. It has been urged by counsel for the petitioner that even though after the adjudication that excise duty was payable on ''Dant Manjan Lal'' demand for the said duty on the seized goods may be justified but the Assistant Collector, Central Excise did not have Jurisdiction either to ask the petitioner to execute any bond or to furnish any cash security. According to counsel for the petitioner when it was for the first time decided on 4th July, 1986 that excise duty on ''Dant Manjan Lal'' was payable, there was no occasion to seize the goods on 17th February, 1986. We find it difficult to agree with this submission. In the instant case the department was always of the view that excise duty was payable on ''Dant Manjan Lal'' and the order dated 4th July, 1986, which was passed on the petitioner''s objection in the circumstances already pointed out above, was indeed in the nature of a reiteration of the stand taken by the Assistant Collector, Central Excise in this behalf. Simply because final order on the petitioner''s objection in the matter about its liability to pay excise duty was passed on 4th July, 1986, it cannot be said from that circumstances alone that the seizure made on 17th February, 1986, was without jurisdiction. As regards that part of the order contained in the letter dated 26th February, 1986, whereby the petitioner was required to execute a bond and furnish security, suffice it to point out that such a power is vested in the Assistant Collector, Central Excise, by Sub-

rule (3) of Rule 206 of the Central Excise Rules, 1944. The said sub-rule provides that anything seized by a Central Excise Officer may, pending the orders of the adjudicating Central Excise Officer, be released to the owner on taking a bond from him in the proper form, with such security as the Collector may require. In view of this clear authorisation it is difficult to take the view that the Assistant Collector, Central Excise, acted without jurisdiction in requiring the petitioner to execute a bond and furnish security for having the seized goods released. For the same reason the submission made by counsel for the petitioner that the order contained in the letter dated 26th February, 1986, was passed without application of mind, cannot be accepted. Lastly, it was urged by counsel for the petitioner that the department was biased against the petitioner and it was as a result of the said bias that the goods of the petitioner were seized on 17th February, 1986. No allegation of personal bias against any particular officer in the writ petition has been brought to our notice. No ground either has been taken therein. What was urged by counsel for the petitioner was that the conduct of the authorities of the department from the very inception was such which indicated that they were out to harass the petitioner on one excuse or the other. In our opinion an inference of bias cannot be drawn in such circumstances. Further, there is no prayer in the writ petition for quashing the actual seizure of the goods on 17th February, 1986. The two reliefs contained in the writ petition have already been indicated above. The grievance of the petitioner in the matter of seizure as set out in the present writ petition is about the requirement of a bond being executed and security being furnished by the petitioner. In regard to that requirement we have already indicated that the Assistant Collector, Central Excise, was empowered to do so by Sub-rule (3) of Rule 206 of the Rules.

4. Counsel for the petitioner made an oral request that he may be permitted to add a ground that the seizure of the goods on 17th February, 1986 was bad. On the facts of the instant case we do not consider it appropriate to permit such a ground being added for two main reasons. Firstly, adding of a mere ground is not sufficient unless necessary averments are made in the writ petition constituting basis for a ground in this behalf. Secondly, as seen above, there is no prayer in the writ petition for quashing the seizure of the goods on 17th February, 1986. As such there is no occasion to add a ground challenging the said seizure. A ground in a writ petition is taken only in support of some relief contained therein. A ground without a relief would be only of academic interest.

5. In the result, we find no merit in this writ petition. It is accordingly dismissed.

6. A certified copy of this order may be supplied to counsel for the petitioner within three days on payment of necessary charges.