(1994) 08 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 713 of 1994

Shyam Lal — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 03-08-1994

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A
Constitution of India, 1950 — Article 226

Citation : (1994) 74 ELT 231

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Sushil Harkauli, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Agarwal, J.—This petition under Article 226 of the Constitution of India is directed against an order dated 12th July, 1994 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, and an order dated 8th August, 1990, passed by the Additional Collector of Customs and Excise, Varanasi.

2. I have heard the learned counsel for the petitioner and Shri Sushil Harkauli, the learned Standing Counsel for the respondents.

3. The petitioner is a manufacturer of biris which is subject to excise duty under the Excises and Salt Act. On 21st July, 1983, the then Assistant Collector issued a notice u/s 11A of the said Act to the petitioner to show cause why central excise duty amounting to Rs. 27,099/- be not realised from him for the period 23rd January, 1978 to 29th October, 1979, during which period, the petitioner was alleged to have sent 74 consignments of biris to different parties at Jagadhari without paying excise duty on the biris contained in the consignments. The petitioner denied having had any such dealings.

4. An order dated 9th April, 1985, was passed by the Additional Collector of Central Excise holding the petitioner liable for excise duty. On appeal, vide order

dated 14th April, 1987, the matter was remanded back to the Additional Collector for readjudication. Thereafter, an order dated 8th August, 1990, was passed, imposing a penalty of Rs. 1,000/- and confirming the demand of Rs. 27,099/-. The petitioner again preferred an appeal to the aforesaid Tribunal which was dismissed by an order dated 31st January, 1994. An application for rectification of the said order was moved which too was rejected by order dated 12th July, 1994.

5. In this writ petition, the learned counsel for the petitioner first contended that the show cause notice was issued by the Assistant Collector while in terms of Section 11A of the Act, the same should have been issued by the Collector. The learned Standing Counsel pointed out that in the year 1983, when the show cause notice was issued/the Assistant Collector was authorised to issue the notice and it is by an amendment, which became effective from 27th December, 1985, that the Collector has been authorised to issue the notice. Learned counsel for the petitioner conceded to this legal position, but then asserted that since the proceedings were finalised in the year 1990, the Collector should have issued a fresh show cause notice. This contention is untenable. The proceedings started on the basis of a notice that was issued by a competent person and it is immaterial who by virtue of subsequent amendments concludes the proceedings. This argument, therefore, is rejected.

6. The next contention was that in this case, evidence of parties located at Jagadhari and of the bank and the railway authorities has been gathered at the back of the petitioner and he was not allowed an opportunity of cross-examining them though the petitioner specifically requested for the same. No copy of any application moved for the purpose has been annexed to the writ petition to show which persons the petitioner required for cross-examination As the order passed by the Additional Collector would show, the evidence collected by the authorities consisted of railway documents which show that the goods had been consigned in the names of Shyam Lal, the petitioner, his brother Ram Ji and one Chakradhari Pandey, who was, admittedly, an employee of the petitioner. The department had also collected the evidence which shows that demand drafts were received from parties located at Jagadhari which were deposited in an account appearing in the name of M/s. Ram Shyam Biri Merchants, which account was operated by the petitioner Shyam Lal and his brother Ram Ji. The petitioner did not dispute the receipt of bank drafts from Jagadhari/Yamuna Nagar, The learned counsel merely contended that mere receipt of bank drafts did not mean that they were in respect of the goods sold. The petitioner did not disclose on what account he received the bank drafts etc. This was a matter exclusively within the knowledge of the petitioner and it was his duty to disclose on what account those drafts were received, failing which the authorities concerned could legitimately assume, with reference to the evidence collected from the railways regarding the despatch of goods in the names of the petitioner, his brother and servant, that those drafts were in respect of the goods sold by the petitioner.

7. Admittedly, no excise duty had been paid in respect of the goods sent to Jagadhari/Yamuna Nagar. The plea that the petitioner required certain persons for cross-examination, seems to have been a mere ploy because in the circumstances, no cross-examination of the railway officials or the bank officials seemed necessary. As already stated, the petitioner has not filed any copy of any application to show which specific individuals he wanted to cross-examine.

8. For the above reasons, I find no force in this writ petition and the same is hereby dismissed in limine with costs.