(1974) 08 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1003 of 1973

S.N. Rolling Mills APPELLANT

Vs

Assistant Collector of Central Excise and Others RESPONDENT

Date of Decision : 05-08-1974

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q
Customs Act, 1962 — Section 110

Citation : (1977) 1 ELT 141

Hon'ble Judges : Gopi Nath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopi Nath, J.—This writ petition challenges an order of the Central Excise Authorities seizing and sealing the petitioner''s Plant, machinery and motor, fixed in his factory situate at Ganesh Ganj, Hathras, District Aligarh.

2. The petitioner is a firm which carries on a partnership business under the name and style of S.N. Rolling Mills. It manufactures untrimmed circles which are used for the manufacture of utensils. The manufacture of untrimmed circles in an excisable item and the manufacturer is liable to pay excise duty on such manufacture. The petitioner''s mill pays excise duty on it. On 15.12.1972 the authorities of the Central Excise Department searched the factory of one Tota Ram which adjoins the factory of the petitioner and recovered a quantity of 2424.5 kg. of copper alloys (Trimmed, untrimmed and charged) for which Tota Ram could not produce any document relating to the payment of excise duty. The goods were accordingly seized and left in his custody. It appears that during the investigation proceedings some statements were made connecting the manufacture of a part of the goods seized with the petitioner''s Factory. A search was thereafter made of the petitioner''s Factory on 14-1-1973 by the Inspectors of the Central Excise Department Kanpur and Aligarh. The Inspectors seized and sealed the machinery, motor and the plant of the petitioner factory. No show

cause notice was given to the petitioner about the proposed action and a representation, made by the petitioner for the seized articles, met with no success. Seizure has been made u/s 110 of the Customs Act read with rule 173Q of the Central Excise Rules. The Petitioner has challenged the seizure on the ground that seizure of immovable properties is not permissible under the provisions mentioned above. The contention is that Section 110 of the Customs Act does not empower the Excise Officer to seize or seal the machinery fitted to earth and rule 173Q relates only to confiscation of property and not to seizure thereof. Section 110 of the Customs Act reads as follows :?

"110. (1) If the proper officer has reasons to believe that any goods are liable to confiscation under this Act he may seize such goods :

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(2) Where any goods are seized under Sub-section (1) and no notice in respect thereof is given under Clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :

Provided that the aforesaid period of six months may, on sufficient cause being shown be extended by the Collector of customs for a period not exceeding six months.

(3) The proper officer may seize any documents or things which in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under Sub-section (3) shall be entitled to make copies thereof or take extract therefrom in the presence of an Officer of customs.

The Section applies to goods. Goods have been defined in sub-clause (2) of Section 2 of the Act as follows :?

"(2) Goods, includes?

(a) Vessels ,aircrafts and vehicles; (b) stores; (c) baggase; (d) currency and negotiable instruments ; and (e) any other kind of movable property."

3. It is thus clear that the term "goods" cannot include immovable property. Movable and immovable property has been defined in the General Clauses Act in Sections 3 26 and 36. Under those provisions immovable property includes land, benefits arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth. Movable property under the General Clauses Act means property of every description except immovable property. No serious argument has been advanced before me on behalf of the respondents that the properties attached and seized, namely, the plants which includes the

machinery and motor attached thereto, and which is permanently fixed to the earth is movable property within the meaning of the Customs Act. Learned counsel for the respondents mainly relied on the provisions of Rule 173Q for the purpose of justifying the seizure. Rule 173Q reads as follows :?

* * * *

4. It is true that this provision includes a plant and a machinery for the exercise of the powers given under the rules. The provision, however, relates to confiscation and not to seizure anything liable to confiscation need not be seized. The provision contemplates that it is only after adjudication that any land, plant or machinery can be confiscated. No adjudication has been made in this case so far by the department establishing that any provision, or any rule has been contravened with intent to evade payment of duty. This will be established in the adjudication proceedings. Until then it does not seem permissible under this rule to put this provision into effect for the purposes of seizing goods which are not liable to seizure under the provisions of Section 110 of the Customs Act. It will be open to the Department to proceed on with the adjudication proceedings and in case they find the petitioner guilty of evasion of excise duty they would take such action as is permissible under law. At this stage it appears that the seizure of the plant including the machine and the motor is not warranted under the provisions of either Section 110 of the Customs Act or the provisions of Rule 173Q of the Central Excise Rules. Under the Customs Act and the Rules framed thereunder seizure and confiscation have been dealt with separately. The Department has not justified the seizure under the provision relating to seizure. They have only tried to justify the action under Rule 173Q of the Central Excise Rules which provision, as observed above, does not seem to apply.

5. The petition succeeds and is allowed. The respondents are directed to release the plant, machinery and motor of the petitioner, seized by them on 17th of January, 1973. It will, however, be open to the Department to proceed on with the adjudication proceedings. The petitioner is entitled to the costs of this petition.

