(1989) 12 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 15086 of 1989

Southern Springs and Wire Products APPELLANT

Vs

Collector of C. Ex. RESPONDENT

Date of Decision : 12-12-1989

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

Citation : (1990) 48 ELT 335

Hon'ble Judges : S. Ramalingam, J

Bench : Single Bench

Advocate : Sriram Ponchu, for the Appellant; N. Jothi, ACGSC and K. Jayochandran, for the Respondent

Judgement

S. Ramalingam, J.—By consent of parties, the writ petition itself is taken up for final disposal.

2. The petitioner claims to be a registered small scale industry manufacturing springs and coils out of raw materials supplied by the 3rd respondent for ultimate use in Government of India projects. It states that as per the terms of the agreement between the petitioner and the 3rd respondent, goods manufactured by the petitioner will have to confirm to the prescribed standards and delivery or clearance from the factory would be made only after inspection by the Officers of the 3rd respondent and not before.

3. On 8-9-1989, the Officers of the 1st and 2nd respondents made an inspection of the petitioner''s factory premises and they seized goods which were in the factory apparently on the ground that it has not been entered in R.G. 1 register. The petitioner herein filed W.P. 12612 of 1989 in this Court for quashing the proceedings culminating in the preparation of the mahazar dated 8-9-1989 relating to the seizure and in that writ petition, the following order was made:-

Heard the counsel on both sides for some time. The learned Additional Central Government Standing Counsel on instructions states that if the petitioner approaches the 1st respondent with appropriate application for release of the goods and expressing his willingness to pay appropriate excise duty, the 1st respondent will release the goods in terms of Rule 206 of the Central Excise Rules, 1944. To this course, Mr. Shriram Ponchu, learned counsel appearing for the petitioner has no objection. Accordingly, on application by the petitioner and on payment of appropriate excise duty, the 1st respondent will release the goods in terms of the abovesaid Rule 206, within three days.

4. On 5-10-1989, the petitioner wrote to the Collector of Central Excise that it is prepared to pay appropriate duty on the seized goods as per the order of the High Court and the duty amount will be paid under protest. By reply dated 6-10-1989, the Deputy Collector (Prevention) informed the petitioner that pending investigation, the petitioner can seek provisional release of the seized goods in terms of Rule 206 of the Central Excise Rules as per the directions of the High Court, Madras. The attention of the petitioner was also drawn to the provisions of Rule 206, under which a person seeking a release is required to execute bond with security as may be intimated. On 19-10-1989, the petitioner wrote back stating that the goods in question may be ordered to be released to it in terms of Rule 206 subject to verification on inspection and it being a small scale industry, a lenient view may be taken and the petitioner may be permitted to obtain release on payment of duty and execution of a bond. It is thereafter the impugned orders dated 24-10-1989 had been issued by the Deputy Collector (Prevention) under which the petitioner was informed as follows:-

Collector has ordered provisional release of the seized goods subject to execution of prescribed B. 11 Bond for the full value of the goods seized with 25% cash security of the amount of the bond. Further the goods are dutiable and appropriate duty has to be paid at the time of clearance.

5. Learned counsel for the petitioner submits that when W.P. No. 12612 of 1989 came up for hearing, learned Additional Central Government Standing Counsel on instructions had stated that if the petitioner approaches the 1st respondent with appropriate application for release of the goods and expressing his willingness to pay appropriate excise duty, the 1st respondent will release the goods in terms of Rule 206 of the Central Excise Rules, 1944. After having taken such a stand, it is not open to the respondents to insist upon the execution of a bond or to demand deposit of 25% of cash security of the amount of the bond. Secondly, he would submit that the goods were not fully manufactured and they were only semi-manufactured and therefore, the liability to enter in R.G. 1 register had not arisen at that stage, when the inspection was made on 8-9-1989. He would also state that on 9-9-1989, the 3rd respondent informed the petitioner that their officers would be inspecting the goods for giving clearance for the release. Therefore, he would submit that prima facie, there is no case made out against the petitioner involving violations of the provisions of the Central Excise Act and Rules. He would therefore submit that there is no justification for directing the petitioner to pay 25% by way of cash security of the amount of the bond. Thirdly,

he would submit that since the petitioner is only a job worker and all that it may be entitled to get from the 3rd respondent who had placed the orders, is the manufacturing expenses plus a reasonable margin of profit, the petitioner should not be mulcted with a liability to pay 25% of the amount of the bond by way of cash security. Lastly, he would submit that it is not as if there is no discretion left with the Authority concerned to dispense with the requirements of Rule 206. He would submit that the furnishing of security besides execution of a bond in the prescribed form is in the discretion of the Collector, because the Rule says, "such security as the Collector may require". Therefore, as a right coupled with duty, the Collector has to exercise his mind and sec whether the security need to be insisted upon or not.

6. Against these submissions, Mr. N. Jothi, learned counsel for the contesting respondents would state that the petitioner was attempting to avoid payment of excise duty and the goods were rightly seized and the earlier writ petition filed by the petitioner, viz. W.P. 12612 of 1989 did not dispense with compliance of Rule 206 of the Central Excise Rules and therefore, the order was very clear in the sense that it directed the petitioner to pay the excise duty on the goods in question as a condition for release besides complying with the terms of Rule 206.

7. A close reading of the order made in W.P. No. 12612 of 1989 would show that the compliance with Rule 206 of the Central Excise Rules was not dispensed with. It is not as if on the mere payment of excise duty on the goods in question, the petitioner is entitled to obtain a release, but he has to still comply with the requirements of Rule 206.

8. Rule 206(3) reads as follows:-

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.

There is, of course, a power vested with the concerned Authority to order the release of the goods seized pending adjudication. When a power is conferred on a Statutory Authority, that power is also coupled with a duty. The duty so enjoined on him has to be exercised to sub-serve the interests of justice. It is not as if in a mechanical manner, the Collector can call upon the person from whom the goods have been seized, to strictly comply with every limb and facet of Rule 206(3).

9. In the instant case, the petitioner is prepared to pay the excise duty on the goods which were seized from its factory. Besides, the petitioner is also prepared to execute a bond in form B. 11 suitably amended by deleting the clause relating to the production of goods in question, whenever called upon by the Excise Department. So far as the furnishing of cash security is concerned, the petitioner states that it being not the owner of the goods manufactured, it being only a job worker earning a very little margin of profit on the job done by it, should not be mulcted with a liability to pay cash security amounting to 25% of the value of the

bond, viz., the value of the goods. Such a direction would be harsh and inequitable, is the contention of the petitioner.

10. There is considerable force in the submission. When it is not in dispute that the petitioner is only a job worker and its claim that the goods were only at the semi-finished stage and were not fully manufactured, has to be adjudicated upon in appropriate proceedings to be initiated by the Department, it would not be fair to direct the petitioner to furnish cash security amounting to 25% of the value of the goods. It has also been stated that Rule 206 does not mandate that release can be made only if besides the execution of the bond, cash security is offered. Therefore, in suitable cases, cash security can be dispensed with and this is one of those cases where such dispensation could have been granted.

11. Therefore, the impugned orders dated 24-10-1989 in so far as it directs the petitioner to pay 25% cash security of the amount of bond will stand quashed. The bond to be executed by the petitioner in form B. 11 would also be suitably modified to dispense with the clause relating to production of goods at a later point of time in the adjudication proceedings.

12. The writ petition is partly allowed as indicated above. No order as to costs.

