(1992) 04 PAT CK 0012

In the Patna High Court

Case No : C.W.J.C. No. 6512 of 1990

Standard Iron Industry APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 16-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0012

Judgement

Aftab Alam, J.—The petitioner in this application under Articles 226 and 227 of the Constitution is a manufacturer of agricultural implements, house-hold articles, steel furnitures and other appliances. He seeks to challenge, inter alia, orders contained in Annexures 3 and 9 to this application. Annexure 3 contains the photo copy of an order dated 31-12-1981 passed by the Additional Collector, Central Excise, Patna whereby certain demands of central excise duty have been made against the petitioner; Annexure 9 contains the order dated 11-7-1990 whereby the appellate tribunal declined to entertain the appeal, preferred by the petitioner against the original order on merits and rejected it at the threshold.

2. It appears that some time in the year, 1979 the petitioner was served with a notice from the Central Excise Authorities for alleged contravention of Rules 9(1), 10(1), 52-A, 173C(A), (B) and (D) and 226 of the Central Excise Rule. On the basis of this notice a proceeding was initiated against the petitioner which concluded in the impugned order dated 31-12-1981. From this order, it appears that the Central Excise Authorities learnt from the records seized from the petitioner firm that it had supplied steel furnitures to M/s. Small Scale Industries Corporation, Patna. These supplies were made without payment of duty. In the notice, the petitioner charged with evading central excise duty to the tune of Rs. 67,167.40. At this stage, it is also required to be noted that the steel appliances which according to the authorities were supplied by the petitioner were as follows:

--- Description of Quantity Value Duty payable Goods

-- 1. Big steel 45 Rs. 30431.03 Rs. 6886.21 almirahs 2. Operation 250 " 185574.54 " 37114.91 tables 3. Labour tables 300 " 79270.86 " 15054.17 ---------------------------------- Rs. 295276.43 Rs. 59055.29 --

3. The Additional Collector in his order found that the charge of suppression of production/clearances against the petitioner was established inasmuch as the petitioner had supplied excisable goods as noted above without proper entry and without payment of central excise duty on them. In the impugned order, however, the exact amount of the duty leviable was not calculated. Instead, a direction was given to the Assistant Collector, Central Excise to make the calculation of the exact amount payable by the petitioner by way of excise duty on the aforesaid goods.

4. It appears that following this order the Assistant Collector made the necessary calculations and found that a sum of Rs. 75,277.40 was payable by the petitioner as excise duty.

5. The petitioner preferred an appeal against this order before the appellate tribunal. The appellate tribunal appears to have granted stay to the petitioner on the condition that it should deposit a sum of Rs. 25,000/-. The petitioner failed to make the deposit as required and as a result the tribunal dismissed the appeal by its order dated 16-2-1989 on the ground of non-complaince with the provision of Section 35F of the Central Excises and Salt Act.

6. The petitioner filed an application for recall of this order but that also was dismissed by order dated 21-4-1989.

7. The petitioner then came to this Court in CWJC No. 7089/1989 and expressed his willingness to deposit a sum of Rs. 25,000/- as ordered by the appellate tribunal. This Court at that stage declined to interfere in the matter but observed that in case the petitioner meant business, he should make that offer to the appellate tribunal which might pass appropriate orders.

8. With this observation from this Court, the petitioner went again to the appellate tribunal where the deposit of Rs. 25,000/- made by the petitioner was accepted. Thereafter, by order dated 11-7-1990 (copy enclosed as Annexure 9 to the writ petition) the appellate tribunal declined to entertain the appeal on merits and refused to recall its earlier order dated 14-2-1989 whereby the tribunal had dismissed the appeal for non-compliance with the provisions of Section 35F of the Act.

9. I am unable to appreciate the stand taken by the appellate tribunal. I can understand the tribunal''s decision not to recall its earlier orders passed in the appeal and to decline to entertain the appeal on merits but then this should have been made clear before accepting the deposit from the petitioner and not after it had accepted the deposit.

10. However, I do not propose to pursue this aspect of the matter any further as I feel that this application is fit to be allowed on merits.

11. As noted above the duty of central excise has been raised against the petitioner for the manufacture of:

(i) 45 pieces of big steel almirah,

(ii) 25 pieces of operation tables; and

(iii) 300 pieces of labour tables.

12. Although the order is silent on this point, in the counter affidavit it has been stated that the aforesaid goods fall under Item No. 40 of Schedule 1 of the Act for the purposes of levying excise duty. Item No. 40 is as follows :

"Steel furniture made partly or wholly of steel, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, whether in assembled or unassembled condition and parts of such steel, furniture (but excluding slotted angles and channels made of steel)."

(emphasis supplied).

It is, thus, clear that almirahs, operation tables and labour tables have been taken by the authorities as steel furnitures for levying excise duty.

13. Mr. Chittaranjan Sinha, learned counsel appearing on behalf of the petitioner has submitted that operation tables and labour tables are not steel furnitures and are., thus, beyond the scope of Item 40 and accordingly no excise duty is leviable on these appliances/goods. In support of his submission, learned counsel placed reliance upon a decision of the Supreme Court in the case of Elpro International Ltd. Vs. Joint Secretary, Govt. of India, Ministry of Finance and Others, In this decision the Supreme Court upheld a decision of the Bombay High Court holding that operation tables are not furnitures and, therefore, they are not covered by Item 40 in the 1st Schedule of the Act. In this decision, the Supreme Court also set aside the order passed by the excise authorities imposing duty on Orthopaedic and Fracture Tables manufactured by the appellant-company. The Supreme Court''s decision applies on all fours to this case so far as operation tables and labour tables are concerned and I have no hesitation in holding that the authorities erroneously sought to bring operation tables and labour tables within the purview of Item 40 of Schedule 1 of the Act and sought to levy excise duty on these goods. The impugned orders in so far as they relate to operation tables, and labour tables are accordingly quashed.

14. As regards steel almirahs, learned counsel for the petitioner submitted that on these goods also the petitioner was not required to pay any excise duty as the firm was covered by exemption Notification No. 33/71-C.E., dated 1-4-1971 as amended by Notification No. 101/72-C.E., dated 17-3-1972. Mr Sinha further submitted that the original order having been passed against the petitioner ex parte and the appellate tribunal having declined to entertain the appeal on

merits, the petitioner never got an opportunity to bring to the notice of the authorities the exemption notification(s) which fully applied to the petitioner firm.

15. Having heard Mr. Sinha and Mr. Verma appearing on behalf of the revenue authorities, I am satisfied that this case insofar as levy of duty on steel almirahs is concerned, must be remitted back to the Additional Collector, Central Excise, Patna who will consider the matter afresh in the light of the aforesaid exemption notifications and pass appropriate order in accordance with law.

16. In the result the impugned orders are quashed insofar as excise duty is levied on operation tables and labour tables; insofar as steel almirahs are concerned, the matter is remitted back for fresh consideration in accordance with law.

17. The amount of Rs. 25,000/- which the petitioner deposited before the appellate tribunal should be refunded back to him within three months from the date of communication production of a copy of this order.

18. In the result, this application is allowed. In the facts and circumstances of this case, however, there shall be no order as to costs.

