

(1993) 11 MAD CK 0034

In the Madras High Court

Case No : Writ Petition No's. 20428 and 20429 of 1993

Sundaram Clayton Ltd.

APPELLANT

Vs

Superintendent of C. Ex., Madras

RESPONDENT

Date of Decision : 29-11-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 57F(2), 57F(4)

Citation : (1994) 70 ELT 190

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Shri Sriram Panchu, for the Appellant;

Judgement

1. The first writ petition is to quash a show cause notice dated 30-8-1993 issued by the first respondent. The second writ petition is to quash a

Trade Notice 12/1993 dated 5-2-1993 issued by the third respondent. The petitioner company is engaged in the manufacture of air assisted

braking equipment. They are also undertaking job work for T.V.S. Suzuki Ltd. by producing castings from the raw materials supplied by the said

customer. Virgin aluminium is procured by the petitioner-company and is converted into alloy ingots by a job-worker. Aluminium ingots are melted

by the petitioner and poured into dies to get necessary castings. Thereafter, the castings are cut to remove ""runners and risers"". The waste

aluminium thus realised recycled, according to the petitioners in their own factory. In the process certain products like "dross" and "ash" are

produced and they are in powder form. These materials are sent outside the factory to be reconverted into aluminium ingots. The petitioner-

company had all along been removing the said "dross" and "ash" under Rule 57F(2) of the Central Excise Rules, on the ground that the removal is

for refining and reconditioning the goods for being used in the manufacture of final products. Such removal is permitted without payment of duty. It

is under these circumstances that the petitioners were surprised to receive the impugned show cause notice from the first respondent, asking them

to show cause as to why a duty of Rs. 16,37,827/- should not be demanded for the removal of the "ash" and "dross" during the period from 1-2-

1993 to 23-8-1993. In the show cause notice the first respondent states that the removal will come under Rule 57F(4). The petitioners made

enquiries and they learnt that the show cause notice was based on the Trade Notice 12 of 1993 issued by the third respondent on 5-2-1993. It is

under these circumstances that the petitioner has challenged the said show cause notice as well as the Trade Notice.

2. A perusal of the show cause notice shows that the respondents are taking a stand that Rule 57F(2) does not cover removal of waste and scrap

outside the factory. The proper Rule which would apply, is Rule 57F(4). The proper remedy of the petitioner is to show cause and explain how

Rule 57F(2) alone applies and not Rule 57F(4). But the learned counsel for the petitioner says that the show cause notice is on the basis of a

Trade Notice issued by the third respondent and therefore, there is no purpose in showing cause and going through the formalities. A perusal of the

Trade Notice dated 5-2-1993 shows that the question had been examined by the Central Board of Excise and Customs and the Department is of

the view that Rule 57F(2) would cover removal of inputs as such or after they have been partially processed, during the course of the manufacture

of final products, to a place outside the factory and that the same would not cover removal of waste or scrap outside the factory. A proper

interpretation of the Rules, according to the Department, is to hold that the removal of waste or scrap should be attracted by Rule 57F(4). In my

opinion, the Trade Notice is of a general nature and does not relate to the petitioner's case or the activities carried on in the petitioner's factory. It

cannot be disputed that the Department can issue Trade Notice of such a general nature. On the basis of such Trade Notice the authorities under

the Act have to examine each case on merits and proceed in accordance with law. It is precisely this method which has been taken by the first

respondent by issuing the show cause notice. In other words, the first respondent will consider the objections of the petitioner and as a Quasi-

Judicial Authority decide whether the facts of the petitioner's case will come under Rule 57F(2) or 57F(4) of the Central Excise Rules. The Trade

Notice does not bind the first respondent and hand and foot in the sense that the first respondent has no discretion or power to decide the case on

merits. I am therefore, not inclined to entertain these writ petitions at the stage of show cause notice.

3. Learned counsel for the petitioner has however, relied on my own judgment in Lakshmi Machine Work Ltd. Vs. Union of India, . A careful

perusal of the judgment would disclose that the following ratio was laid down :-

I am clearly of the opinion that this factual assessment has to be made by the Quasi-Judicial Authorities prescribed under the Act, it cannot be laid

down as a uniform and inflexible rule that notional interest payable on advances/deposits made by customers can or cannot be included in the

assessable value of the goods. In the particular case, the notional interest may influence the sale price as amounting to additional consideration. In a

particular case it may not so influence.

I had rendered a finding in that case that a Circular dated 20-10-1986 was valid because it was general terms whereas the trade notice dated 26-

10-1990 had dispensed with certain requirements of ""a nexus between the deposits and price"". In other words, I had held that the Trade Notice

interfered with the Quasi-Judicial power of the Authority issuing the show cause notice. Therefore, the said decision will not apply to the facts of

the present case.

4. For the reasons already given by me I am not inclined to entertain these writ petitions at the stage of the show cause notice and they are

accordingly, dismissed. It is open to the petitioner-company to submit his explanation and proceed in accordance with law.