
(1988) 04 OHC CK 0020

In the Orissa High Court

Case No : Original Jurisdiction Case No. 420 of 1980

Suresh Tobacco and Co.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-04-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 156A, 156A(2), 156A(3), 156A(4), 156B

Citation : (1988) 66 CLT 78 : (1988) 16 ECC 245 : (1989) 22 ECR 576 : (1989) 39 ELT 15

Hon'ble Judges : H.L. Agrawal, C.J;G.B. Patnaik, J

Bench : Division Bench

Advocate : R.K. Mohapatra, for the Appellant; Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The demand of duty to the extent of Rs. 4,986.10 on tobacco for nonproduction of triplicate copy of the application, made by opposite party No. 5 in exercise of powers under Rule 156-B of the Central Excise Rules, 1944 (hereinafter referred to as the "Rules"), annexed as annexures 1 and 2 to the writ petition, is being challenged by the petitioner in this writ petition.

2. The petitioner is a wholesale dealer in tobacco and having received an order from the consignee (opposite party No. 6) for despatch of 43 bales of Butts Fadar Tobac co applied for permission for removal from the warehouse and for despatch to the consignee (opposite party No. 6) at Kesinga. The Inspector of Central Excise, Bargarh, issued necessary order for such removal whereafter the petitioner removed the said tobacco from the warehouse and despatched the same to Kesinga. In accordance with the Rules, the petitioner presented an application in triplicate for such removal and after due endorsement of the Inspector on the same, the triplicate copy had been sent to the consignee (opposite party No. 6) along with necessary permit for removal. The Inspector of Centra! Excise, Bargarh, sent the duplicate copy to the Inspector of destination

and the original had been kept with him. The entry in respect of the said consignment was also duly checked up by the Superintendent of Central Excise during his visit to Bargarh. Opposite party No 6 took delivery of the consignment from Kesinga Railway Station and also duly accounted for the same in his warehouse register. All on a sudden, the petitioner received the impugned notice under Annexure-1 from opposite party No. 5 making a demand for payment of duty to the tune of Rs. 4,986.10 for non-production of the triplicate copy. On receiving the said notice, the petitioner requested opposite party No. 5 to make appropriate enquiries from his counterpart, the Sector Officer at Kesinga, since according to the petitioner, the petitioner had duly despatched the consignment but has not received the triplicate copy from the consignee and, therefore, was not in a position to produce the same before the appropriate authority. The petitioner also had filed an application before the Assistant Collector, Central Excise, Sambalpur, for cancellation of the demand in question, but instead of cancellation, the petitioner received the reminder dated 3-10-1978 from opposite party No. 5, which has been annexed as Annexure-2 to the writ petition. Petitioner, therefore, has approached this Court for quashing of the demand made under Annexures-1 and 2.

3. The stand of the opposite parties in the counter filed in this Court is that under Rule 156-A(4), the consignor is required to present the triplicate application duly endorsed with such certificate to the officer-in-charge of the warehouse of removal within ninety days of the date of issue of the transport permit and since admittedly the petitioner had not complied with the same, the appropriate authority has issued the demand in question in accordance with Rule 156-B of the Rules. There has been no denial in the counter affidavit filed by the opposite parties to the assertion made in the writ application that the consignment had been duly despatched by the petitioner and received by the consignee (opposite party No. 6) and further that the said consignment had been duly entered in the warehouse register of opposite party No. 6 and it is opposite party No. 6 who has not returned the triplicate copy as a result of which the petitioner has not been able to produce the same before the appropriate authority. Further, the assertion of the petitioner in paragraph 17 of the writ application to the effect that the Collector, Central Excise & Customs demanded the full duty on the said consignment on the consignee (opposite party No. 6) for a sum of Rs. 4,986.10 on the footing that the goods have been properly rewarehoused by the consignee has also not been denied.

4. The short question which arises for consideration is whether non-compliance of Sub-rule (4) of Rule 156-A of the Rules empowers the appropriate authority to make the demand in question under Rule 156-B of the Rules, as contended by the opposite parties, or not. There is no dispute that Sub-rule (4) has not been complied with by the petitioner though the petitioner contends that such non-compliance is on account of non-cooperation of opposite party No. 6 and the petitioner was not at fault on any account. To answer the question, it would be appropriate to extract Rules 156-A and 156-B of the Rules:

"156-A. Procedure in respect of goods removed from one warehouse to another. - (1) The application for removal of goods from one warehouse to another shall be presented by the consignor in triplicate, and in the proper Form, to the officer-in-charge of the warehouse of removal, at least 24 hours before the intended removal, together with such other information as the Collector may by general or special order require.

(2) Such officer shall then take account of the goods, and after completing the removal certificate on all the copies of the application, shall send the duplicate to the officer-in-charge of the warehouse of destination, and hand over the triplicate to the consignor for despatch to the consignee. He shall also deliver to the consignor a transport permit in the proper Form.

(3) On arrival of the goods at the warehouse of destination, the consignee shall present them together with the triplicate application and the transport permit to the officer-in-charge of such warehouse, who shall, after taking account of the goods, complete the rewarehousing certificate on the duplicate and the triplicate application, return the duplicate to the officer-in-charge of the warehouse of removal, and triplicate to the consignee for despatch to the consignor.

(4) The consignor shall present the triplicate application duly endorsed with such certificate to the officer-in-charge of the warehouse of removal within ninety days of the date of issue of the transport permit under Sub-rule (2) "

"156-B. Failure to present triplicate application. - (1) If the consignor fails to present the triplicate application to the officer-in-charge of the warehouse of removal in the manner laid down in Sub-rule (4) of Rule 156A, and the duplicate application endorsed with the rewarehousing certificate has also not been received by such officer from the officer-in-charge of the warehouse of destination, the consignor shall, upon a written demand being made by the former officer, pay the duty leviable on such goods within ten days of the notice of demand and if the duty is not so paid he shall not be permitted to make fresh removals of any warehoused goods from one warehouse to another until the duty is paid or until the triplicate application is so presented or the duplicate application is so received.

(2) Where such duty has been paid, it shall be refunded to the consignor either on his presentation of the triplicate application to or on the receipt of the duplicate application by the officer at the warehouse of removal, duly endorsed, as provided in Sub-rule (3) of Rule 156-A, with a certificate by the officer-in-charge of the warehouse of destination that the goods covered by the application have been satisfactorily rewarehoused."

Rule 156-A prescribed the procedure in respect of goods removed from one warehouse to another. Sub-rule (4) thereof casts an obligation on the consignor to present the triplicate application duly endorsed with such certificate to the officer-in-charge of the warehouse of removal within ninety days of issue of removal permit. Admittedly, this provision has not been complied with by the

petitioner in the present case. But under Rule 156-B, a demand can be made only if the consignor fails to present the triplicate application to the officer-in-charge of the warehouse of removal in the manner laid down in Sub-rule (4) of Rule 156-A and the duplicate application endorsed with rewarehousing certificate has also not been received by such officer from the officer-in-charge of the warehouse of destination. Both these aforesaid requirements must be satisfied before a written demand can be made upon the consignor to pay the duty leviable on the goods in question. There is no assertion either in annexure-1 or in annexure-2 that the duplicate application endorsed with the rewarehousing certificate has also not been received from the officer-in-charge of the warehouse of destination, i.e., Kesinga. Even in the counter affidavit filed on behalf of the opposite parties, there is no mention that the second requirement of Rule 156-B (1) has also been satisfied so as to enable the appropriate authority to make the demand in question. In this view of the matter, even though admittedly, the consignor has failed to present the triplicate application to the officer-in-charge of the warehouse of removal in the manner laid down in Sub-rule (4) of rule 156-A, the concerned authority has no jurisdiction to make the demand in question, since there is no finding or material that the duplicate application endorsed with the rewarehousing certificate has also not been received. Accordingly, the demand raised under Annexures-1 and 2 in exercise of powers conferred under Rule 156-B (1) of the Rules cannot be sustained. Consequently, the demand raised under Annexures-1 and 2 is set aside and the writ application is allowed, but in the circumstances, without any order as to costs.

H.L. Agrawal, C.J.

5. While I entirely agree with the views of my learned brother G.B. Patnaik, I may add a few observations of my own.

6. Whereas, no doubt, under Sub-rule (4) of Rule 156-A of the Central Excise Rules, the consignor has to present the triplicate application to the officer-in-charge of the warehouse within 90 days of the date of issue of the transfer permit under Sub-rule (2), that by itself does not warrant the imposition of the duty payable on the goods ipso facto. The prescribed authority in that case has to follow the procedure laid down in Rule 156-B(1) of the Rules which is a sine qua non for levying the duty. On the facts brought on the record, the opposite parties have not made out any case to show that this statutory requirement of Rule 156-B(1) was complied with.

7. The writ application, therefore, must succeed.