

(1981) 04 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5180 of 1980

Suryachandra Paper Mills (Pvt.) Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise, I.D.O., Rajahmundry
and Another

RESPONDENT

Date of Decision : 07-04-1981

Acts Referred:

Citation : (1983) 12 ELT 801

Hon'ble Judges : B.P. Jeevan Reddy, J

Bench : Single Bench

Advocate : V. Jogayya Sarma, for the Appellant; Subrahmanya Reddy for Central Government, for the Respondent

Judgement

1. The petitioner is a manufacturer of paper. According to Notification No. 128/77-C.E. dated 18-6-1977, a manufacturer is entitled to remission of 75% of the excise duty, provided his installed capacity is less than 2600 tonnes per month. The petitioner obtained a licence with a capacity 2600 tonnes per month. But he says that the actual installed capacity of his mill is only 1600 tonnes per month. The Assistant Collector of Central Excise, I.D.O. Rajahmundry by his order dated 14-7-1980 held that inasmuch as the petitioner has produced only a provisional certificate from the Director General, Technical Development and failed to produce the final certificate, inspite of giving repeated opportunities, he is not entitled to any exemption and therefore made the petitioner liable to pay the excise duty at full rate. Against this order, the assessee-petitioner filed an appeal before the Appellate Collector, who by his order dated 16-10-1980 allowed the appeal. It is relevant to refer to the reasoning of the Appellate Collector. The order of the appellate authority says that Notification No. 128/77 does not provide for the production of a certificate from the Director General, Technical Development and the insistence on the production of such a certificate is unsustainable. Accordingly, he set aside the order of the Assistant Collector and directed that he should undertake fresh enquiries and pass suitable revised order in the light of the enquiry, after compliance with the principles of natural justice.

This order has become final.

2. For subsequent period, the same question again arose for consideration. The original authority levied full excise duty on the ground that no final certificate was produced by the petitioner regarding his installed capacity. The appellate authority was of the view that it would be safe for the revenue and equitable for the petitioner to pay duty at the rate of 50% of the full effective rate of duty and clear the goods. He further observed that payment of this duty shall be provisional and the assessment should be finalised only after the receipt of the final certificate from the Director General Technical Development. It is against this order directing the petitioner to pay 50% of the excise duty, the petitioner filed the writ petition.

3. The contention of the learned counsel for the petitioner is that the present order cannot stand in view of the order of the appellate authority dated 16-10-1980 referred to above. He also says that after the said order of the appellate authority, no enquiry has been made and no finding has been given with respect to the installed capacity of the petitioner.

4. I am of the opinion that this contention has to be given effect to. Once the appellate authority has stated that the Notification No. 128/77 does not provide for the production of a certificate, the petitioner cannot be found fault with for non-production of such a certificate. Further, as per the order of the appellate authority, enquiry has not been conducted to determine the installed capacity of the petitioner. Nothing prevents the assessing authority from doing so and then deciding whether the petitioner is entitled to any exemption and if so to what extent. In this view of the matter, the writ petition has to be allowed.

5. It is made clear that this order is passed on the basis of the order of the appellate authority dated 16-10-1980. If in future the said order is set aside according to law, it would follow that assessing authorities will be entitled to pass orders afresh after notice to the petitioner.

6. The Writ Petition is allowed. No costs.