

(1981) 08 BOM CK 0037

In the Bombay High Court

Case No : Miscellaneous Petition No. 1790 of 1977

T.C.G. Industries Pvt. Ltd.

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 27-08-1981

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q

Citation : (1989) 25 ECR 414 : (1983) 12 ELT 319

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The petitioners are a Company carrying on business of manufacturing and selling of the wire ropes at its manufacturing unit at Lekhraj Davral Industrial Estate, Saki-Vihar Road, Bombay. The petitioners have their registered office at Bibijan Street, Bombay, while their godown is situate at Narayan Dhuru street, Bombay which is about a kilometer away from the Head Office.

2. The wire ropes manufactured by the petitioners are liable to payment of excise duty from March 1, 1973 onwards. On December 12, 1974, the Officers of the Central Excise, intercepted a tempo at Sion Junction and on search 16 bundles of wire ropes valued at Rs. 12,000/- were found. The Central Excise Officers suspecting that the goods were removed without payment of excise duty, seized the same. The Officers recorded the statement of the driver of the tempo as well as its owner. Thereafter the petitioners were served with a show cause notice dated May 17, 1975 to show cause why the seized goods should not be confiscated and penalty should not be imposed for contravention of various rules of Central excise.

3. The petitioners gave its reply on July 22, 1975 and inter alia claimed that the goods seized were sent under a challan to New India Iron and Steel Company who had placed the order for the same on October 17, 1974. The petitioners claim that the goods were sent on December 2, 1974 but as the Customer declined to accept it, they were returned to the petitioners on December 12,

1974 and the petitioners were removing the same to their godown. The petitioners pleaded that the goods which were seized were those which were stored in their godown prior to March 1, 1973, the date from which the goods were liable to excise duty. The alternate submission advanced was that even if it was found that the goods were removed subsequent to that date, the petitioners had, in fact, paid the duty.

4. The Deputy Collector of Central Excise, Bombay, by order dated December 27, 1975 confiscated the goods under Rule 173Q of the Central Excise Rules and imposed a penalty of Rs. 750/-. The petitioners were given an option to redeem the goods seized on payment of Rs. 4,000/- within a period of one month and also on payment of duty. The petitioners carried an appeal before the Appellate Collector, Central Excise, but that ended in dismissal by an order dated March 27, 1976. The revision preferred by the petitioners to the Government of India also met with the same fate and the order of the revisional authority is dated March 28, 1977. These orders are under challenge in the present petition filed under Article 226 of the Constitution of India.

5. Shri Singh, the learned counsel appearing in support of the petition, has raised two or three contentions to challenge the legality of the order. The first submission of the learned counsel is that though the Deputy Collector relied upon the statements of Abdul Karim Abbas, the driver of the tempo and Shri Hasan Babu Shaikh, the owner of the tempo to record the finding against the petitioners, the petitioners were deprived of the opportunity of cross-examining either of them. The learned counsel submitted that failure to give proper opportunity to cross-examine has resulted into violation of principles of natural justice. There is no merit in this submission. The record does not indicate that the petitioners were prevented from cross-examining these witnesses. The petitioners have made no grievance on this count in the appeal preferred before the Appellate Collector of Central Excise. A copy of the grounds of appeal annexed as Ex. D to the petition nowhere refers to the denial of the opportunity of cross-examination. The grievance on this count is made for the first time in this petition and it is obvious that it is an after-thought. The petitioners never availed of the opportunity to cross-examine and it is too late in the day to make any grievance on that count. Shri Singh then urged that the Deputy Collector recorded the statement of Shri Inder Paul Gupta, Director of the petitioners, on September 29, 1975 and after completion of cross-examination and production of relevant documents, the petitioners were assured that the next date of hearing would be communicated. The complaint is that the Deputy Collector failed to inform the date but straightway proceeded to pass the order. I am not impressed by this submission because although a grievance on this count is made in paragraph 9 of the Memo, the contention was not pressed at the hearing before the Appellate Collector, Central Excise and Customs. The order of the Appellate Collector makes no reference to this ground and it is obvious that the contention was not agitated.

6. The learned counsel argued that the revisional authority has not given proper opportunity to the petitioners to place its grievance before it. The revisional authority informed the petitioners that the hearing was fixed on March 24, 1977 at Delhi and the petitioners may remain present with documents as the request for personal hearing has been granted. The petitioners sent a reply dated March 22, 1977 in which it is claimed that on an earlier hearing fixed at Bombay, the petitioners were sarcastically told that they would be heard for three days after the hearing is fixed at Delhi. The petitioners, by their reply, claimed that the date of hearing at Delhi should be changed and a fresh suitable date should be communicated to him. The grievance is that the revisional authority failed to comply with the request of the petitioners. There is no merit in this submission. In the return filed by the respondents sworn by Shri Bruno Gerald Thomas Collaco, the Assistant Collector of Customs, it is claimed that the reply sent by the petitioners never reached the revisional authority prior to the hearing and, therefore, there was no occasion to consider the request for further adjournment. In my judgment, it is not open for the petitioners to claim that as long as he is not ready to go for hearing, the revisional authority must adjourn the hearing. Apart from this consideration, I have considered the claim of the petitioners on merits and I find that there is no substance in any of the defences raised.

7. It is not in dispute that the goods seized are liable to payment of excise duty from March 1, 1973. The petitioners were not clear as to what defence they should raise in respect of the charge that the goods were removed without payment of duty. The petitioners in the first instance claimed that the goods seized were these which were removed from the factory prior to March 1, 1973 and stored at the godown. The petitioners were unable to produce any record to substantiate this claim and the authorities below rightly turned down this contention. The petitioners made an alternate plea that even assuming that the goods seized were removed from the factory subsequent to March 1, 1973, those were removed after payment of duty. The petitioners were also unable to produce any material to substantiate its claim and in these circumstances, the authorities below were justified in relying upon the statement of the driver and the owner of the tempo that the goods seized were those which were removed from the factory. In my judgment, unless the petitioners establish their contention by appropriate material, it is futile to claim that the impugned orders in any way suffer from infirmity. In these circumstances, I do not find any reason to disturb the order of the authorities below and the petition must fail.

8. Accordingly, the rule is discharged with costs.