(1991) 12 CAL CK 0002

In the Calcutta High Court

Case No : Application in C.R. No. 10510 (W) of 1980

Titagarh Paper Mills Co. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 18-12-1991

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11B, 11B(2)

Citation : (1992) 57 ELT 527

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Samir Chakraborty and Manas Panda, for the Appellant; N.C. Roy Choudhury and Sunil Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Suhas Chandra Sen, J.—This case reveals an extraordinary attitude of the Central Excise Department. Court orders are not being carried out in case after case, day after day, when money is directed to be realised by the Collector of Central Excise. Goods had been cleared by furnishing bank guarantees for the disputed amounts to the satisfaction of the Collector of Central Excise under orders of Court. When after final hearing, Court directs the Collector to realise the duty by encashment of bank guarantees, it is found in most cases that the bank guarantees are not traceable in the files of the department or the bank guarantees have been allowed to lapse. No initiative is taken by the Collector or the Assistant Collector or anybody else in his department to find out what has happened to the bank guarantees and whether it is possible to encash the bank guarantees. No attempt is even made to contact the bank; no criminal proceeding has been started in a single case so far. In some of the extreme cases, this Court suo motu has issued contempt proceedings against the writ petitioners, but not a single contempt application has been filed on behalf of the Central Excise Department. The same pattern is also noticeable in the department of the Collector of Customs where goods have been cleared against bank guarantees. This is what has been happening in this Court in case after case over the last six months when the old cases ready for hearing are being taken up.

2. In fact, in to-day''s list several cases are pending, e.g., item No. 6 in the case of Rajendra Kumar Gupta and item No. 5(b) in the case of Narayan Balakrishna Nair where the bank guarantees have disappeared mysteriously from the files. No attempt has been taken on behalf of the Collector of Customs to realise this amount. In the background of this total apathy and disinclination to realise the Government dues even when the Court has decided the cases in favour of the department, a strange and unusual zeal has been shown in the instant case in denying the petitioner the fruits of his success in the department as also in this Court, in the name of protection of Government Revenue.

3. An order was passed by the Collector of Central Excise on 18th of September, 1980, as a result of which certain refunds were due to the petitioner. The refunds were not paid. The Appellate Collector''s order was not carried out by the officials of the Central Excise department for which no justification has been shown in the affidavit that was filed. The court directed on 16-8-1991 to carry out the order of the Appellate Collector within a period of three weeks. The order was passed in presence of the Counsel appearing for the Central Excise Department. The order was not carried out within three weeks'' time. On behalf of the Excise Department an application has now been made for modification of the order dated 16-8-1991. In view of the amendment of Section 11B of the Central Excise Act which has come into force on and from 20th September, 1991. It is to be noted that the respondents had failed to carry out the order of the court passed on 16-8-1991 and failed to make any payment within the date stipulated in that order. They did not make any application for extension of the time for making payment within the stipulated period. Having defaulted and after having failed to carry out the court''s order as directed, the respondents have now made this application. The application appears to be entirely malafide and should be dismissed on this ground alone.

4. Moreover, the proviso to the amended Section 11B(a) lays down that:

"Provided that where an application for refund has been made before the commencement of the Central Excise and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under the Sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of Sub-section (2) as substituted by that Act."

This proviso can only apply to applications which have been made before the amendment came into force but was not dealt with and or disposed of in accordance with the law in force at the material time. On or from 20th September, 1991, the applications which were pending, will have to be dealt with in accordance with the amended provisions of law. In my judgment this provision cannot apply to a case where not only an application for refund was made but dealt with and disposed of by a final order. A specific order was passed by the court. The amended provisions of Section 11B of the Central Excise Act does not have the effect of nullifying that order.

5. In that view of the matter, this application must fail and is dismissed.

6. There will be no order as to costs.

7. The department is directed to supply xerox copy of this order to the learned Advocates appearing for the parties on usual charges and on undertaking to apply for and obtain certified copy of this order.