

Shreeji Traders Vs. Assistant Commissioner of Central Excise, Hyderabad

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Court : Andhra Pradesh

Decided On : Aug-01-1996

Reported in : 1996(3)ALT1077; 1997(96)ELT514(AP)

Judge : B.S. Raikote and ;S.S. Mohammed Quadri, JJ.

Acts : Central Excise Rules, 1944 - Rule 230 and 230(2)

Appeal No. : Writ Petition No. 8965 of 1996

Appellant : Shreeji Traders

Respondent : Assistant Commissioner of Central Excise, Hyderabad

Advocate for Def. : P. Innayya Reddy, SCCG

Advocate for Pet/Ap. : V. Jogayya Sarma and ;V. Venkata Rao, Advs.

Judgement :

Syed Shah Mohammed Quadri, J.

1. The petitioner seeks a Writ of Mandamus declaring that Rule 230(2) of the Central Excise Rules, 1944, for short the 'Rules' does not confer any jurisdiction and power on the respondent to attach duty-paid goods and for a consequential direction to declare that Order D.O.R. No. 21/88, CFC (PF), dated April 16, 1996 of the Assistant Commissioner of Central Excise, Respondent No. 1 is without

jurisdiction and is illegal.

2. The petitioner is a dealer in G.T.C. Brands of cigarettes at Hyderabad. It receives supplies of cigarettes from G.T.C. Industries Limited, Bombay and Hyderabad. It claims to have purchased central excise duty paid cigarettes from G.T.C. Industries Limited, Bombay and Hyderabad. On April 18, 1996 Order bearing D.O.R. No. 21/88 CFC (PF), dated April 16, 1996 issued by the 1st respondent, was served on the petitioner by the Inspector of Central Excise who came to the petitioner's premises along with two panch witnesses and attached goods worth Rs. 12,16,367.98. The petitioner says that under Rule 230(2) of the Rules the goods cannot be attached and prays that the impugned order of the 1st respondent be declared as illegal, arbitrary and without jurisdiction.

3. A counter affidavit is filed by the Assistant Commissioner of Central Excise, the 1st respondent. It is stated that the order of attachment was issued under Rule 230(2) of the Rules to realise the arrears of revenue pending collection from M/s. G.T.C. Industries Limited. It is not controverted that the goods in question are duty paid goods. In Paragraph (4) of the counter-affidavit it is stated as follows :

'... Then the Manager himself submitted the invoice dated 12-4-1995 and other documents to the officers to apprise the Assistant Commissioner that the goods were duty paid and they have been purchased from M/s. G.T.C. and according to him, the goods were not liable for attachment. After apprising the Assistant Commissioner, the documents as submitted by the petitioner were returned back to them...'

4. Mr. V. Jogayya Sarma, the learned Counsel for the petitioner, submits that under Rule 230(2) duty paid goods cannot be attached, therefore, the impugned order is ultra vires the power of the 1st respondent and is illegal and arbitrary.

5. The learned Standing Counsel for the Central Government contends that as the petitioner is successor in business of M/s. G.T.C. Industries Limited, therefore the goods have been attached to recover the arrears of duty due by the said Company.

6. Rule 230(2) of the Rules reads as follows :

'230. Goods, plant and machinery chargeable with duty not paid. -

(1) xx xx xx

(2) Where any such person transfers or otherwise disposes his business, in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in the business or trade or part thereof, by any other person or persons, all excisable goods, materials, preparations, plant, machinery vessels, utensils, implements and articles in the custody or possession of the person or persons succeeding may also be obtained for the purpose of exacting duty due from the producer, manufacturer or dealer upto the time of such transfer, disposal or change, whether such duty has been assessed before such transfer, disposal or change, but has remained unpaid, or is assessed thereafter.'

7. A perusal of the sub-rule (2) of Rule 230, extracted above, makes it abundantly clear that to invoke the power under the said provision the following conditions have to be satisfied, viz.,

(i) any person who has to pay the excise duty leviable on any goods, transfers or otherwise disposes of his business, in whole or in part or effects change in the ownership thereof;

(ii) some other person succeeds in business or trade or part thereof;

(iii) the duty on the goods must have been assessed before such transfer, disposal or change but has remained unpaid or the duty is assessed after such transfer.

If the above three conditions are satisfied, all the excisable goods, materials, preparations, plant, machinery etc., and articles in the custody or possession of the person or persons succeeding, can be attached.

8. It would be appropriate to read here the impugned order which is in the following terms :

'Office of the Assistant Commissioner, Central Excise, Hyderabad, IX Division D.O.R. No. 21/88 CFC (PF), dated 16-4-1996.

Sub : CR - Attachment order for realisation of revenue arrears against M/s. G.T.C. Industries, Bombay and M/s. G.T.C. Industries, Hyderabad - Reg.

I, the Assistant Commissioner of Central Excise, Division IX, Hyderabad, in exercise of powers conferred on me under Rule 230 of the Central Excise Rules, 1944, hereby authorise C. Jai Kumar, Inspector, for Central Excise, Division IX, Hyderabad, to attach all the excisable goods which are manufactured and cleared by M/s. G.T.C. Industries, Bombay available at the premises of M/s. Shreeji Traders, Ramkoti, Hyderabad to realise the arrears of revenue pending against M/s. G.T.C. and U.T.C. in terms of Order-in-Original No. 25/1992, dated 10-7-1992 passed by Commissioner of Central Excise, Delhi. Sd./-N. K. PrasadaAssistant Commissioner'.

9. From a perusal of the order extracted above, it is manifest that none of the requirements of rule, has been satisfied. Indeed, there is not even a reference to transfer of business by M/s. G.T.C. Industries Limited to the petitioner. It is not even alleged that the petitioner is the successor of M/s. G.T.C. Industries Limited. There is no mention that the goods have been assessed to duty and the duty has been paid. For want of fulfilment of requirements of Rule 230(2) of the Rules, the impugned order cannot be sustained. Indeed, the order is ex facie without jurisdiction and devoid of authority of law.

10. For the above reasons we declare the impugned order as without jurisdiction arbitrary and illegal direct the respondents to release the goods from the attachment.

11. The Writ Petition is accordingly allowed with costs. Advocate's fee is fixed at Rs. 1000/-.