Madan Mohan Vs. Superintendent of Central Excise

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Court : Allahabad

Decided On : Jul-17-1991

Reported in : 1995LC18(Allahabad); 1992(58)ELT497(All)

Judge : B.P. Jeevan Reddy, C.J. and ;R.R.K. Trivedi, J.

Acts : Central Excise Rules, 1944 - Rules 9A(1), 19 and 149

Appeal No. : Civil Misc. Writ Petition No. 216 of 1981

Appellant : Madan Mohan

Respondent : Superintendent of Central Excise

Disposition : Petition dismissed

Judgement :

B.P. Jeevan Reddy, C.J.

1. This writ petition was filed by a large number of agriculturists/growers of tobacco. During the years 1976-77 and 1977-78, they raised tobacco in their land.

2. Rule 9A(1) of the Central Excise Rules provides that in the case of goods removed from the premises of curer on payment of duty, the date on which the duty is assessed is the relevant date for determination of duty and tariff valuation.

3. The petitioners opted for assessment of their tobacco under Rule 9A(1) read with Rule 19 of the Central Excise Rules, 1944. They did not pay the duty assessed. Demand notices were accordingly issued. It is then that they came forward with the present writ petition.

4. In the writ petition, it is alleged that the tobacco had become unfit for human consumption on account of storage and, therefore, they wanted to use it for agricultural purposes. Accordingly, it is said that they approached the authorities on several occasions to permit them to do so and to remit the duty. It is complained that no action was taken by the authorities and at the same time they were proposing to recover the duty assessed and were adopting coercive process.

5. In the counter-affidavit this averment is denied. Indeed, it is submitted that in view of the option exercised by the petitioners, the question of remission of duty does not arise. It is also pointed out that Rule 149 has no application inasmuch as none of the petitioners had licenced premises/warehouses nor it is their case that their tobacco was stored in a licenced warehouse.

6. No material is filed by the petitioners nor is brought to our notice to show that they had, at any time, filed an application for remission. Rule 149 which appears to be the only Rule for remission of duty on tobacco has no application to the petitioners' case because their tobacco was not stored in a warehouse. The duty was assessed in this case no ground has been made out upon which it can be held that it is not recoverable.

7. The writ petition accordingly fails and is dismissed. No costs.