L.M.L. Ltd. Vs. Collector of Central Excise

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Court : Allahabad

Decided On : May-14-1991

Reported in : 1992(61)ELT240(All)

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

Acts : Central Excise Act, 1944 - Sections 35G(3); Central Excise Rules, 1944 - Rules 173Q, 198, 223 and 226

Appeal No. : Reference Application No. 69 of 1991

Appellant : L.M.L. Ltd.

Respondent : Collector of Central Excise

Disposition : Application dismissed

Judgement :

B.P. Jeevan Reddy, C.J.

1. This is an application Under Sub-section (3) of Section 35G of the Central Excises and Salt Act, 1944. By this application the petitioner manufacturer is requesting this Court to direct the CEGAT to state as many as eight questions of law, which according to it arise from the Tribunal's order dated 30th March, 1990. The eight questions of law sought to be referred are the following:

(1) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the imposition of fine of Rs. 30,000 and penalty of Rs. 25,000 and order of confiscation of 603 scooters by the respondent was valid in law?

(2) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the RG-1 stage had been reached in respect of scooters even before they have been subjected to quality control tests, checks and inspection by the quality control staff and the 'OK' stickers initialled by the competent quality control staff who would authenticate the same only on completion of the respective checks, tests etc.?

(3) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the computerised daily production statement in which the 603 scooters in question had been properly entered and recorded by the assessee was liable to be rejected as not being a proper record of evidence of the goods produced within the factory and accountal thereof in the records of the assessee?

(4) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that on the basis of the computerised daily production statement which was before the Collector as well as the Tribunal there can be any allegation of non-accountal and clandestine removal of the 603 scooters in question particularly when the computerised used daily production statement was available from the inception of the factory which had not even been looked into by the lower authority?

(5) Whether on the facts and in the circumstances of the case the 603 scooters lying within the factory could at all be alleged to be meant for clandestine removal and whether confiscation thereof by the respondent could be held to be valid in law?

(6) Whether on the facts and in the circumstances of the case the Tribunal was justified in upholding the order of the respondent in the matter of confiscation of the 603 scooters and imposition of redemption fine of Rs. 30,000 for the alleged non-production thereof when such a condition for physical production of the

scooters already released is impossible to comply with ignoring the fact that a procedural requirement which is impossible to comply with must be deemed in law to have been waived?

(7) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that stagewise accountal is necessary in regard to the manufacture of scooters and if so whether the respondent would have been able to maintain accounts stagewise and comply with all the formalities and requirements if he had been the assessee?

(8) Whether on the facts and in the circumstances of the case the Tribunal ought not to have been guided by the following decisions rendered by other Benches of the same Tribunal and also by the Supreme Court in the following cases brought to its notice to hold that no penalty or fine should have been imposed in the light of the same?.

(a) Hindustan Steel Ltd. v. State of Orissa -1978 (2) E.L.T. (J 159) (SC)

(b) Collector of Central Excise v. General Cement Products Ltd. - 1989 (39) E.L.T. 689 (Tri.)

(c) Kellner Pharmaceuticals Ltd. v. Collector of Central Excise - 1985 (20) E.L.T. 80 (Tri.)

(d) Lohia Machines Ltd. v. Collector of Central Excise - 1988 (37) E.L.T. 381 (Tri.)

(e) Hindustan Lever Ltd. v. Collector of Central Excise - 1989 (43) E.L.T. 568 (Tri.)

(f) Raza Textile Ltd. v. Collector of Central Excise -1989 (44) E.L.T. 233 (Tri.).

2. The petitioner is a manufacturer of scooters. A physical verification was conducted on 2-8-1985 which revealed that 603 scooters were in excess than what was recorded in the register RG-1. A show cause notice was issued calling upon the petitioner to show cause as to why the penalty should not be imposed under Rules 198, 223, 226 and 173Q of the Central Excise Rules, 1944 and why the 603 Vespa scooters be not confiscated under Rule 173Q of the said rules. The petitioner showed cause, after considering which the Collector of Central Excise

passed an order confiscating the said scooters and also levied a penalty of Rs. 30,000. Of course, the petitioner was given an option of redeeming the said scooters, on payment of redemption fine amounting to Rs. 25,000. The petitioner questioned the said order by way of an appeal before the CEGAT which was dismissed, as aforesaid, on 30th Mach, 1990.

3. The basic allegations against the petitioner was that at the time of physical verification, 894 scooters were found to have been stored in the factory premises at various places. Of these, 603 scooters, though bearing 'OK' stickers were not entered in the register RG-1 or in any other appropriate register. The petitioners case was that these 603 scooters were under 'WIP' and had not qualified for being fully complete. Its case was that even though 'OK' stickers were placed on the scooters, they were still subject to audit, only whereafter they are sent to bonded store room. The Collector rejected this contention. He observed further that even if it is accepted that the scooters were not fully manufactured/finished, yet there is no reasons for not accounting for the same in the column in the Finishing Room in RG-1. Before the Tribunal, it was submitted that since the process of manufacture had not been completed in respect of the said scooters there was no occasion for entering them in RG-1. The petitioner submitted that there was no mala fide intention of evasion of duty on the part of the petitioner and that omission, if any, is technical in nature. The Tribunal observed that the said 603 scooters bore 'OK' stickers which means that they have already passed the quality shop inspection. Even otherwise, if what the petitioner says is true they ought to have been entered in the computerised daily production report. Indeed, it observed that the said report was not produced at the time of checking on 1-8-1985 or even on 2-8-1985 (the date of seizure). Its production later was held to be belated. It was also observed that the petitioner's plea was not acceptable even on the perusal of daily production report, register for quality control and inspection and the column relating to 'In finishing Room' in RG-1 register. On the above facts the appeal was dismissed.

4. We are of the opinion that the findings of the Tribunal are factual in nature and that no question of law arises from the order of the Tribunal. The fact remains that no entries were made in RG-1 register or any other register. The learned counsel

for the petitioner argued that the scooters cannot be sold in a market unless they are properly registered and that, therefore, there is no room for any clandestine removal. According to him the violation is merely technical in nature. We are, however, of the opinion that the said contention is neither acceptable in principle nor can it be said to arise from the order of the Tribunal. The registers provided by rules must be maintained and it is no answer to say that the scooters cannot be sold without paying the duty, we cannot also entertain the proposition that unless duty is paid, scooters cannot be sold or disposed of. Suffice it to any that the questions of law suggested do not arise from the Tribunal's order.

5. The application is accordingly dismissed.