Surendra Kumar Vs. the Inspector/Range Officer, Central Excise and anr.

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Court : Allahabad

Decided On : Dec-10-1991

Reported in : 1993(42)ECC59

Judge : S.D. Agarwala and ; S.P. Srivastava, JJ.

Appeal No. : Civil Misc. Writ Petition No. 62 of 1983

Appellant : Surendra Kumar

Respondent : The Inspector/Range Officer, Central Excise and anr.

Judgement :

S.D. Agarwala, J.

1. The petitioner Surendra Kumar is a sole proprietor of the firm M/s. Sharda Tobacco Store, Miranpur, Tahsil Jansath, District Muzaffarnagar. The above-mentioned firm holds a licence for a private bonded warehouse for unmanufactured tobacco trader rules 174 and 178 of the Central Excise Rules, 1944. The petitioner has executed a general bond as required by law in respect of the warehouse. The dispute in the present petition is in regard to the removal of four consignments of manufactured tobacco from the warehouse of the petitioner under the consignor's bond executed in Form B-5 to the warehouse of M/s. D.H. Tobacco Company Ishahari, Rohtak Division of Chandigarh Collectorate.

2. The case of the petitioner is that the petitioner obtained accessory permit for transport of unmanufactured tobacco to M/s. D.H. Tobacco Company and in accordance with the permit the petitioner had removed from the warehouse of the petitioner the unmanufactured tobacco which was duly re-warehoused at the warehouse of M/s. D.H. Tobacco Company. The details of the four consignments, the details of their removal and the receipt by M/s. D.H. Tobacco Company have been mentioned in para 8 of the writ petition.

3. The Central Excise Inspector issued four notices of demand in form DD which have been attached as Annexures 1, 3, 4 and 5 of the writ petition.' In accordance with the demand notices, the total amount of the demand of excise duty comes to Rs. 54,948/-.

4. After the petitioner received the first notice of demand which was dated 31.12.76, the petitioner filed objection on 16.1.76 which has been attached at Annexure 2 to the writ petition. On receipt of the demand notices Annexures 3, 4 and 5 which are of the same date, namely, 6.8.77, the petitioner filed objection on 14.8.77 which is Annexure 6 to the writ petition. The petitioner's case in these objections is that he has not committed any illegality and has transported the unmanufactured tobacco from the warehouse of the petitioner to M/s. D.H. Tobacco Company as per the permit and the demand is wholly illegal. In the writ petition, the petitioner has categorically averred in para 28 that the demand has been raised in the notice without issuing any show cause notice to the petitioner and without giving him any opportunity in that regard. A counter-affidavit has been filed by Sri S.L. Sharma on behalf of the Excise Authority. In this counter-affidavit, it has not been specifically denied that the petitioner was afforded an opportunity to show cause before the notice of demand was issued (sic). In the circumstances it is established on record that the impugned demand notices have been issued against the petitioner without affording him any opportunity of being heard and without deciding the objections filed by the petitioner vide Annexure 2 and 6 to the writ petition. Since the demand notices have been issued against the petitioner without affording him any opportunity of being heard, in our opinion, the demand notices cannot be sustained in the eye of law.

5. In the result, the petition is allowed. The demand notices attached as Annexure 1, 3, 4 and 5 to the Writ petition, details of which are given below

1. D.D. 2 No. 051890 dated 31st December 1975 for a sum of Rs.15,360/-

2. D.D. 2 No. 051891 dated 6th August, 1977 for Rs.17,628/-

3. D.D. 2 No. 051892 dated 6th August, 1977 for Rs.11,760/-

4. D.D. 2 No. 051893 dated 6th August, 1977 for Rs.10,200/-

are quashed. The respondents are directed to dispose of the objections dated 16.1.76 and 14.8.77 after hearing the petitioner. It is, however, made clear that in case the petitioner's objections are not accepted, it will be open to the authorities to raise fresh demand against the petitioner in accordance with law. The objections shall be disposed of by the respondent Excise Authorities by a reasoned order.