

Vishwakarma Corpn. Vs. Cce

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Court : Allahabad

Decided On : Feb-21-1995

Reported in : 1995(60)LC619(Allahabad)

Judge : A.P. Misra and ;J.S. Sishu, JJ.

Appeal No. : CE (Reference) Application No. 150 of 1994

Appellant : Vishwakarma Corpn.

Respondent : Cce

Disposition : Application dismissed

Judgement :

A.P. Misra, J.

1. Rejoinder affidavit filed today.
2. The present reference application is under Section 35G(3) of the Central Excises and Salt Act.
3. We have heard learned Counsel for the petitioner as well as Sri S. Farman Ahmad Naqvi, learned Standing Counsel.
4. The applicant seeks reference of the following questions to this Court for adjudication:

1. 'Whether the Hon'ble Tribunal was correct to uphold the order of the Additional Collector, Kanpur, which was based on a corrigendum which (corrigendum) has sought to cure the show cause which was without jurisdiction.
2. Whether mere grant of opportunity of personal hearing and observing of the principles of natural justice can validate the proceedings which were without jurisdiction.
3. Can the Department be allowed to plug the loopholes in a statutory document, i.e., show cause notice was furnished by the applicant. The Hon'ble Tribunal in the order under reference has upheld this action of the Department.
4. Whether the Hon'ble Tribunal is correct in upholding an order which had upon the powers of another adjudicating authority with whom the matter was lying subjudice more especially when there was no change in law.
5. Whether the Hon'ble Tribunal is correct in upholding the invoking of extended period of limitation when the fact that the applicant was clearing rejected pipes was well within the knowledge of the Department since the copies of the gate passes under which the same were cleared were submitted along with the monthly RT-12 returns.
6. Whether the Hon'ble Tribunal is correct in holding that the applicant were required to file classification list of rejected pipes.
7. Whether the Hon'ble Tribunal is correct to hold that the standard goods were cleared under the garb of rejected goods when no corroborative evidence was brought by the Department such as seizure in transit or at the dealers' premises or by checking the books of account of dealers etc.
8. Apart from citing two case laws on the question of jurisdiction and maintainability of show cause notice sufficient case law was submitted on the question whether extended period could be justified in the facts and circumstances of the present case. But there is neither discussion nor the same have been followed.

5. In fact, the applicant pressed question Nos. (1), (5) and (7) only.

6. The Central Excise Officers made a surprise visit to the factory of the applicant on 20th February, 1987. On scrutiny of the records it was found that the applicant was removing standard pipes as rejected pipes and thereby not paying the appropriate duty on such pipes. A show cause notice was issued. In pursuance thereof, the duty was imposed on the pipes shown by the applicant as sub-standard pipes, which in effect, was old pipe shown as such though they were standard pipes and hence evading the tax. The findings recorded by the Tribunal on this question are as follows:

On the question of selling standard goods in the garb of rejected goods, I find that there was no mention in the classification list that the goods not upto the standard of LSI specifications were also being cleared. The contention of the appellant that there was no provision of declaring seconds in the classification list is not correct. I also find that the Engineer of the Company of the appellant had stated that there was never any purchase/sale of rejected goods and this statement is very well corroborated by the classification list. I therefore hold that standard goods were being cleared by the appellant at a lower price thus evading payment of appropriate duty as well as misdeclaring the goods....

7. In view of the findings recorded, as aforesaid, especially the fact recorded that the Engineer of the Company had stated that there was never sale and purchase of rejected goods, which is a finding of fact and it is on that basis, viz., statement of the Engineer of the Company no sub-standard pipes were ever sold and since this was not indicated as rejected or sub-standard in the classification list the case of the applicant was not accepted. No question has been raised either before the Tribunal or before this Court regarding this part of the aforesaid finding. Hence, the questions which the applicant is seeking do not arise out of the Tribunal's order and further the said finding being a finding of fact we do not find any question of law in this regard.

8. Accordingly, the present application fails and is rejected.

