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thermoking Vs. Union of India

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Court : Delhi

Decided On : May-14-1996

Reported in : 1996IIIAD(Delhi)165; 64(1996)DLT12; 1996(38)DRJ480

Judge : Anil Dev Singh, J.

Acts : Central Excise Rules, 1944 - Rule 2

Appeal No. : Civil Writ Appeal No. 1758 of 1993

Appellant : thermoking

Respondent : Union of India

Advocate for Pet/Ap. : R.K. Anand,; Kanchan Singh and; P.S. Khera, Advs

Judgement :

Anil Dev Singh, J.

(1) This is a petition whereby the petitioner challanges the notice dated 28th of July 1992 issued by Shri Sidharth Kak, Collector Central Excise, New Delhi requiring to show cause why duty specified therein should not be demanded from it under the provisions of Rule 196 of the Central Excise Rules 1944 (for short 'the Rules') and under Section 9(2) read with Section 11(a) of the Central Excise Act and Salt Act 1944 (for short the 'Act') for the period 1988-89 and 1991-92, why seized goods valued at Rs. l,89,630.00 be not confiscated under Rules 226 and/or

Rule 173 (o) (i) of the Rules; why penalty should not be imposed under Rules 173 (o) (i), 52 (a) 210 and 226 of the 'Rules', why land building and machinery used in connection with production storage, removal or disposal of excisable goods be not confiscated under Rule 173 (o)(ii) of the Rules, why security furnished by the petitioner under Rule 192 be not forfeited in accordance with the provisions of Rule 196, etc. The facts which lie in a short compass are as follows:

(2) The petitioner is engaged in the manufacture of airconditioners, geysers, washing machines, heat convectors etc. The factory of the petitioner is located at A-24 Naraina Industrial Area, New Delhi. The petitioner obtained a Central Excise license dated 5th December 1988 for procuring the compressors at nil rate of duly under Central Excise Notification dated 1st March .1986, for use in the manufacture of water coolers subject to the condition that they will follow the procedure prescribed in Chapter 10 of the Central Excise Rules, 1944. For availing the concession, the petitioner executed Central Excise Bonds jointly and severally with the Bank of India, Maya Puri, New Delhi. On the basis of the Intelligence report to the effect that the petitioner had diverted the compressors for the manufacture of airconditioners, the factory premises of the petitioner and its other premises were searched by the officers of Excise Department on 28th February 1992. During the course of the search on the said date, the officers seized certain goods pertaining to the petitioner under Section 110 of the Excise Act, 1962 as made applicable to the Central Excise matters by virtue of Central Excise Notification No. 68/63 dated 4th May 1963. The officers also seized documents which were regarded relevant. It was also allegedly revealed that no water coolers were manufactured by the petitioner for which.purpose the petitioner had obtained a Central Excise license and had procured compressors at nil rate of duty. As stated above, the petitioner was issued a Show-cause Notice on 28th July 1992. It is this notice which is impugned in the writ petition. The only contention of the petitioner is that officer issuing the Show-cause Notice did not have the authority to issue the same. In order to appreciate the contention of the petitioner, it would be necessary to note that Shri Sidharth kak who issued the notice was posted as Collector of Central Excise (Judicial) Delhi vide Ministry of Finance (Department of Revenue) Office Order No. 130/90 dated 13th August 1990.

(3) According to Rule 2(iii) Collector is defined as under: 'Collector' means: In the Union Territory of Delhi and the State of Haryana, the Collector of Central Excise, Delhi.'

(4) It may be pointed out that through a Corrigendum dated 5th February 1993 issued by the Ministry of Finance (Department of Revenues), the word 'judicial' appearing in the office Order No. 130/90 whereby Shri Sidharth Kak was posted as Collector of Central Excise (Judicial) was deleted.

(5) The contention of learned counsel appearing for the petitioner is that at the time of issuance of the Show-cause notice, Shri Sidharth Kak was Collector Central Excise (Judicial) Delhi and was not Collector Central Excise, Delhi. According to the learned counsel, it was the Collector Central Excise, Delhi and not Collector Central Excise (Judicial) Delhi who could issue the Show-cause Notice. He further submitted that Corrigendum dated 5th February 1993 deleting the word -judicial' from the Office Order No. 130/90 dated 13th August 1990 could not have the effect of validating the Show-cause Notice which was issued on 28th July 1990 i.e. on the dale when Shri Sidharth Kak was not Collector of Central Excise, Delhi but was Collector of Central Excise (Judicial), Delhi. The rectification carried out on 5th February 1993 could not relate back to the date when the Show-cause Notice was issued, submitted the learned counsel for the petitioner. In support of his submission, the learned counsel relied upon the following decisions:

I)The Income Tax Officer Vs . I.M.C. Ponnoose & others : [1970]75ITR174(SC) Wodcrafts Enterprise Corporation Private Limited v. the Sales Tax Officer Ward No. 23 New Delhi (1972) 29S TC 315 B.C. Samathanmath v. the Sales Tax Officer-1 Circle Hubli & others (1969) 24 Scc 252 B.K. Srinivasan & others Vs . State of Karnataka & others : [1987]1SCR1054 .

(6) I have considered the submissions of the learned counsel for the petitioner. There is no dispute with regard to the proposition that a subordinate legislation takes effect from the date it is promulgated and published. It is also correct that if Shri Sidharth Kak was not the Collector of Central Excise, Delhi on 28th July 1992, he could not have issued the Show-cause Notice. The question is whether or not Shri Sidharth Kak was the Collector Central Excise, Delhi on 28th July 1992. At

this stage, it would be convenient to extract Office Order No. 130/90 dated 13th August 1990 in so far it is relevant:

'ON return from leave, Shri Sidharth Kak, Director of Preventive Operations Delhi, is transferred and posted as Collector of Central Excise (Judicial),' Delhi with immediate effect vice Shri K.D. Dayal appointed as Commissioner (Drawback) Department of Revenue.'

(7) A perusal of the aforesaid Office Order shows that Shri Sidharth Kak was undoubtedly a Collector of Central Excise and was posted in the Union Territory of Delhi as Collector of Central Excise (Judicial) Delhi. According to the definition of Collector in Rule 2(iii)(0 of the Rules, Collector in the Union Territory of Delhi and in the State of Haryana means the Collector of Central Excise, Delhi. Mere addition of the word 'judicial' with the Collector of Central Excise, Delhi would not derogate from the fact that Shri Sidharth Kak was the Collector of Central Excise in the Union Territory of Delhi. thereforee, for the purpose of Section 2(iii)(f) Shri Sidharth Kak was the Collector of Central Excise in the Union Territory of Delhi. Mere fact that the word 'judicial' occurred in the Order of his posting, will not make him any less the Collector of Central Excise in the Union Territory of Delhi. thereforee, the contention of the learned counsel for the petitioner that Shri Sidharth Kak was not the Collector of Central Excise, Delhi and was, thereforee, not authorised to issue the Show-cause Notice on 28th July 1992 is without force. It is noteworthy that the petitioner has merely been served with a notice to show cause and will have the opportunity under law for making a reply and of a personal hearing. The petitioner before the authority can show that the notice to show cause should be discharged.

(8) In view of the foregoing discussion, I am of the opinion that Shri Sidharth Kak was competent to issue the impugned notice. Writ petition is accordingly dismissed.

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