Laxmi Narayan Sharma Vs. Superintendent, C. Ex. and Cus.

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Court : Rajasthan

Decided On : May-21-1996

Reported in : 1996(87)ELT345(Raj); 1996(3)WLC394

Judge : M.A.A. Khan, J.

Acts : Central Excise Tariff Act, 1985; Central Excise Act, 1944 - Sections 9(1), 36B, 37(B) and 119; Income Tax Act, 1961; Code of Criminal Procedure (CrPC) - Sections 245(2) and 482; Central Excise Rules - Rules 9(1), 53(2), 170, 173Q and 226

Appeal No. : S.B. Criminal Misc. Petition No. 660/95

Appellant : Laxmi Narayan Sharma

Respondent : Superintendent, C. Ex. and Cus.

Advocate for Def. : R.P. Meena, Adv.

Advocate for Pet/Ap. : P.K. Kasliwal, Adv.

Disposition : Petition allowed

Judgement :
ORDER

M.A.A. Khan, J.

1. This petition under Section 482 Cr. P.C. is directed against the order, dated February 1, 1995 whereby the Special Judicial Magistrate (Economic offences) Rajasthan, Jaipur, rejected petitioner's application under Section 245(2) Cr. P.C.

2. The relevant facts are that the petitioner is the Managing Director of . R.S.R.K. Marbles Ltd., Nathdawara (Udaipur), which is engaged in the manufacture of irregular marbles slabs falling under Chapter 25 sub-heading No. 2504.21 of the Central Excise Tariff Act, 1985 and attracting liability to pay excise duty. On October 13, 1988, the officers of the Excise and Customs Department conducted a survey at the business premises of petitioner's Company and found that the said Company had cleared 849.52 Sq. Mts. of marbles slabs, without payment of excise duty amounting to Rs. 8,919.96. It further appears that on examination of the record pertaining to production of slabs and gate passes it was also found that during the period from October 9, 1988 to October 13, 1988 the petitioner's Company had cleared 330.05 Sq. Mts. of marbles slabs, without accounting for in RG 1 Register and without payment of duty amounting to Rs. 3,465/-. The officers were, therefore, of the opinion that petitioner's Company had contravened the provisions of Rules 9(1), [53(2)], [173Q] and 226 of Central Excise [Rules] amounting to Rs. 12,384/- and thus committed the offences punishable under Sections 9(l)(b), 9(l)(bb) and 9(l)(bbb) of the Central Excises and Salt Act, 1944 (for short, 'the Act') punishable under Section 9(l)(ii) of the Act.

3. The Superintendent, Central Excise (Prosecution) accordingly filed a complaint against the petitioner in the Court of Special Judicial Magistrate (Economic Offences) Rajasthan, Jaipur. During the pendency of the complaint before the learned Magistrate, the petitioner filed an application under Section 245(2) Cr. P.C. with the contention that in view of the Circulars issued by the Central Board of Excise and Customs (for short, the Board) no prosecution for evasion of excise duty which did not exceed Rs. 10,000/-, should have been launched by the department against him and since such prosecution had been launched in violation of the standing orders and guidelines of the Board, the prosecution was liable to be dropped and the petitioner entitled to be discharged. After hearing the parties on such application of the petitioner the learned Magistrate held that since he had already taken cognizance of the offences, as against the petitioner and

since the order/circular/guideline issued by the Board were not binding on the Court, the prosecution against the petitioner could not be dropped. It is that order which is being challenged by way of this petition.

4. Mr. P.K. Kasliwal, learned counsel for the petitioner vehemently urged that the order/circular/guidelines issued by the Board were binding on the officers of the Department of the Excise and Customs Department and therefore, the complaint filed in contravention of the binding circulars was not maintainable. In support of his contention Mr. Kasliwal relied upon the Supreme-Court decision in the case of K.P. Vergliees - : [1981]131ITR592(Cal) . The learned counsel produced the relevant circulars before me. The copy of the order, dated 28 July, 1989 passed by the Assistant Collector, Central Excise and Customs Division Jaipur, was also produced. The learned counsel appearing for the Excise and Customs Department could not dispute the authenticity of the documents produced by Mr. Kasliwal for the perusal of the Court.

5. The order passed by the Assistant Collector, Central Excise and Customs Division, Jaipur, dated July 28, 1989 in the case of the petitioner clearly states that a demand of central excise duty amounting to Rs. 8,091.96 only in respect of 849.52 Sq. Mts. regular marbles slabs removed calendestinely without payment by the Assistant Collector by the said order was raised. The Assistant Collector had directed confiscation of 1,016.42 Sq. Mts. of unaccounted irregular marbles slabs under Rule 170 of the Central Excise Rules. It is thus clear that the petitioner was an accused of evading excise duty amounting to Rs. 8,919.96 only.

6. Section 37(b) of the Act empowers the Central Board of Excise and Customs to issue such orders, instructions and directions to the Central Excise Officers as it may deem fit and further directs that such officers and all other persons employed in the execution of the Act shall observe and follow such orders, instructions and directions of the Board. In exercise of the powers conferred upon it by Section 37B, the Board, issued guidelines for launching prosecutions in the cases of evasion of payment of excise duty. Clause (iii) of the guidelines issued vide F. No. 208-6M/77-CX 6, dated July 26, 1980 stated that in order to avoid prosecution in minor cases a monetary guideline is being prescribed. It was directed that

prosecution should normally be launched where the duty evaded or attempted to be evaded was Rs. 10,000/- or more. In the cases involving amounts less than that prosecution should not ordinarily be launched. The cases or habitual offenders may be taken into account while deciding whether the prosecution was called for or not.

7. From the above guidelines it is evident that in order to avoid prosecution in minor cases it was considered proper by the Board that prosecution should not normally be launched in those cases where the duty avoided or attempted to be evaded was less than Rs. 10,000/-. Such guidelines were, however, not applicable to the cases of habitual offenders.

8. By a subsequent Circular of August 9, 1990 the limit of Rs. 10,000/- as fixed by the circular, dated July 26, 1980 was raised to Rs. 1,00,000/-. In that behalf Para 2(iii) of the letter No. 218/1 /BI /CX 6 issued by the Government of India in the Ministry of Finance (Department of Revenue) may be referred to Para 2(iii) of the said circular reads as under :-

'In order to avoid prosecution in minor cases, a monetary limit of Rs. 10,000/- was prescribed in the instructions contained in Board's letter F. No. 208/6/M- 77/CX 6, dated 26-7-1980. Based on experience, and in order not to fritter the limited man-power and time of the Department on too many petty cases it has now been decided case of habitual offenders, the total amount of duty involved in various offences may be taken into account while deciding whether prosecution is called for. Moreover, if there is evidence to show that the person on or the company has been systematically engaged in evasion over a period of time and evidence to prove mala fides is available, prosecution should be considered irrespective of the monetary limit.'

9. It is thus clear that the Board though it fit not to launch prosecutions in those cases wherein there was technical breach of the provision of the Act or the rules made thereunder or where the excise duty evaded involved an amount less than Rs. 10,000/-. It was a matter of policy and in 'view of the fact that it was up to the department to punish the offenders by way of confiscation of their goods and levy of penalties, the Board could have decided not to enter into fruitless litigation in the

cases involving negligible or less amounts of evaded excise duty.

10. Section 36B of the Act, empowers the Board issue orders, instruction and guidelines for the proper and effective administration of the Act, the language of Section 36B clearly suggests that once the orders instructions and directions are issued by the Board to the Central Excise Officers, such officers and all the persons employed in the execution of the Act shall observe and follow them. The language of the section, therefore, clearly speaks that the orders, instructions and directions issued by the Board to the Central Excise Officers would be having binding force.

11. In the case of K.P. Verghees (supra), the Supreme Court held that the circulars issued by the Central Board of Direct Taxes were binding on officers employed in the execution of the Income Tax Act, 1961. Their lordships observed at page 613 as follows :

'It is now well settled as a result of two decisions of this Court, one in Navnit Lal C. javeri v. K.K. Sen, A AC : [1965]56ITR198(SC) and the other in Ellerman Lines Ltd. v. CIT : [1971]82ITR913(SC) that circulars issued by the CBDT under Section 119 of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act'.

12. It would thus appears that where an order, instruction or direction is issued by a superior authority to its subordinate officers in exercise of the powers conferred by the statute and such order, instruction and guidelines are beneficials to the interest of the subject, they have a binding force and should be complied with. It is particularly so in matters relating to levy of tax, cess or duty on the subject. Such orders, instructions or circulars are, no doubt, not binding upon the courts but since, they are issued by a superior authority to its subordinate authorities employed in the execution of the statute they carry a binding force insofar as the subordinate authorities are concerned. The circulars referred to above issued by the Central Board of Excise and Customs prohibited the officers of the Department to launch prosecution in the cases of evasion of duty amounting to not more than Rs. 10,000/-. Such circulars were, on the face of it, beneficial to the interest of the subject. Moreover, the intention behind issuing such circulars was not to launch

fruitless criminal litigation and waste public money and energy in prosecution involving petty amounts. Since the order passed by the learned Assistant Collector in the present case clearly stated that the petitioner had evaded payment of excise duty amounting to Rs. 8,919.26 only which was a figure below Rs. 10,000/-, no prosecution should have been launched in view of the clear and specific circulars issued by the Board. The continuation of the prosecution in violation of the binding circulars of the Board, in my opinion amounts to abuse of the process of the court and therefore, the proceedings pending against the petitioners in the lower court are required to be quashed to prevent such abuse.

13. In the result this petition is allowed and the proceedings pending against the petitioner for violation of certain provisions of the Act and the rules framed there under are set aside and the complaint of Superintendent, Central Board of Excise and Customs Department against the petitioner is hereby quashed and directed to be dropped.