Standard Colour Products Vs. Superintendent of C. Excise, Madras

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Court : Chennai

Decided On : Nov-18-1993

Reported in : 1994(72)ELT243(Mad)

Judge : Raju, J.

Appeal No. : Writ Petition No. 573 of 1985

Appellant : Standard Colour Products

Respondent : Superintendent of C. Excise, Madras

Advocate for Def. : Shri S. Ramanujam, Addl. Govt. Pleader and;Shri K. Jayachandran, Addl. Central Govt. Standing Counsel

Advocate for Pet/Ap. : Shri S. Subbiah, Adv.

Judgement :
ORDER

1. The above writ petition has been filed for a writ of Certiorari to call for and quash the proceedings of the First respondent in Re. No. 30225/84, dated 5-1-1985 said to have been received by the petitioner on 22-1-1985. Under the impugned proceedings, the first respondent has called upon the petitioner to pay sum of Rs. 11,245.93 said to be the amount of Excise Duty, outstanding due, within seven days on threat of coercive action, for recovering the amount, invoking the provisions of the Revenue Recovery Act. It is seen from the said notice that the

impugned communication emanated on account of a request made from the Superintendent of Central Excise.

2. The petitioner is M/s. Standard Colour Products at No. 63, G.N.T. Road, Pulal, Madras-66 and were manufacturing synthetics, organic dyestuffs falling under Tariff No. 14(d) of the erstwhile Central Excise Tariff. Being a small scale unit, they have been discharging their liability to pay the excise duty under the simplified procedure in terms of Rule 173RD of the Central Excise Rules, 1944, according to which, a flat rate liability of Rs. 3,687/- p.m. was fixed as payable by the petitioner irrespective of the quantum of manufacture and the liability was computed on the same. The petitioner not only accepted the system of payment under the said Rule, but have also been discharging their liability till October 1977. From November 1977 onwards, the petitioner appears to have committed default necessitating the quantification of the demand for the period from November 1977 to March 1978 comprising of 5 months. The total due as per the agreed norms and rates was determined at Rs. 18,435.95 and adding a sum of Rs. 184.36 towards the 'Special Excise Duty' on Rs. 3,687.19 for the month of March 1978, the total was arrived at Rs. 18,620.31. It appears that as early as on 14-3-1980, by a letter of the petitioner, they agreed to pay the arrears in monthly instalments of Rs. 500/- and subsequently also they appeared to have sought for further time to pay the instalments. The Superintendent of Central Excise, Group IV-D, Madras, was said to be reminding the petitioner from time to time to pay the arrears.

3. While so, the petitioner, by his letter dated 7-9-1982, appears to have intimated to the second respondent that they are entering into an arrangement with M/s. Standard Products having their office at No. 127, Angappa Naicken Street, Madras-1 and representing that they are going to manufacture paint, thinners, spray oil and white oil etc. Further permission was sought for to pay the arrears in easy instalments. The said M/s. Standard Products also appears to have not only entered into an agreement with the petitioner but have also undertaken to the Department to pay the amount due from the petitioner at the rate of Rs. 1,000/- every month. This is borne out by the communications available in its original, in the files made available by learned counsel appearing for the second respondent. The fact remains and that there is no serious controversy over the position that

only a sum of Rs. 5,000/- has been remitted on 25-9-1982 and a further sum of Rs. 2,374.38 on 5-2-1983. After deducting the said sum of Rs. 7,374.38, the balance of Rs. 11,245.93 remained yet to be recovered, and, since neither the petitioner nor M/s. Standard Products, as per their undertaking, honoured their commitments and remitted the amount, the second respondent was obliged to address the first respondent for the recovery of sum due as arrears of land revenue due to the State. It is under such circumstances, the above writ petition came to be filed. The main and only submission that has been raised before me, at the time of hearing by learned counsel for the petitioner is that the second respondent, having agreed as per an arrangement to receive the arrears from M/s. Standard Products, 127, Angappa Naicken Street, Madras-1 and having also received a portion of the amount from them is estopped from falling back on the petitioner to recover the outstanding balance from the petitioner, and that too, by invoking the summary procedure under the Revenue Recovery Act.

4. Mr. S. Ramanujam, learned Additional Government Pleader appears for the first respondent and Mr. K. Jayachandran, learned Additional Central Government Standing Counsel appears for the second respondent.

5. Learned counsel for the second respondent, while inviting my reference to the correspondence in the file produced and the averments made in the counter-affidavit, contends that the primary liability and obligation for the payment of the due is that of the petitioner who alone was assessed as being liable to pay the due and that any arrangement to receive the amount, if paid, from the third parties like M/s. Standard Products cannot absolve the petitioner of their statutory responsibilities and primary duty to pay the dues, due to the State and consequently there is absolutely no merit in the stand taken by the petitioner. According to the learned counsel for the respondents, since the petitioner has failed to pay the arrears of due and assessed on him, the second respondent was well within his right in addressing the first respondents to have the arrears recovered by invoking the provisions of the Revenue Recovery Act and no exception could be taken to the impugned communication issued by the first respondent.

6. I have carefully considered the submission of learned counsel appearing on either side. I am of the view that the plea on behalf of the petitioner is not only frivolous but cannot be countenanced in law. The conduct of the petitioner only indicates the extent of abuse of the privilege and permission granted to the petitioner to pay the amount in easy instalments and also by accepting to receive not only from the petitioner but also from whomsoever, it comes to the Department. Apart from the letter written in 1980, adverted to already, by the petitioner, undertaking to pay the amount in instalments, from the file, I am able to see a communication addressed by the Proprietor of the petitioner-concern on 7-9-1982, in which, after referring to the arrangement, the petitioner has stated that in view of their getting into the line of manufacture referred to above in that letter, they would request the second respondent to permit them to pay the dues in easy instalments as per the conversation also had with one Mr. H.K. Bhattad, who is said to be the proprietor of the Standard Products, who has agreed to pay the amount on behalf of the petitioner. It is further made clear in this letter that the petitioner is also undertaking to guarantee the ultimate payment of the entire amount. In the light of the above, the fact that an arrangement to receive the amount from also a third party was accepted in my view, does not have any consequence in law so as to completely exonerate the primary duty and responsibility as well as the liability of the petitioner to pay the amount assessed on him. The liability of the petitioner subsists and continues till it is cleared by remittance to the State. The assessment upon the petitioner, as already indicated, was at a flat as per the arrangement entered into by the petitioner and the Department under Rule 173RD. Consequently, it is not open to the petitioner to contend that there is no separate order of assessment assessing the duty. Having agreed to pay the flat rate of duty and having all along been paying at such flat rate till October 1977, it does not lie in the mouth of the petitioner to say that he was not aware of any assessment having been made on the petitioner.

7. For all the reasons stated above, I do not see any merit whatsoever in the claim or objection of the petitioner. So long as the petitioner is still liable to pay the arrears of Excise duty and the person whom he has introduced has not also honoured his commitment and wiped off the arrears, the liability of the petitioner remains unaltered and therefore the second respondent was well within his rights

in addressing the first respondent to have the amount of arrears of Excise Duty recovered, by invoking the provisions of the Revenue Recovery Act. The petitioner has not pleaded or substantiated or challenged the impugned proceedings on any other ground. The only ground pleaded having been rejected, the writ petition is liable to be dismissed in the circumstances and is accordingly dismissed. However, there will be no order as to costs.