M/S. Triveni Rubber And Plastics vs Collector Of Central Excise, Cochin on 30 March, 1993

Equivalent citations: AIR1994SC1341, 1996(54)ECC17, 1994(73)ELT7(SC), 1994SUPP(3)SCC665, AIR 1994 SUPREME COURT 1341, 1994 AIR SCW 775, 1994 (3) SCC(SUPP) 665, (1996) 54 ECC 17, (1994) 73 ELT 7

Bench: B.P. Jeevan Reddy, N. Venkatachala

JUDGMENT

1. This appeal is prefer red under Section 35B of the Central Excises and Salt Act, 1944 against the Judgment and Order of the Customs, Excise and Gold (Control) Appellate Tribunal. The appellant-Triveni Rubber & Plastics - is a partnership firm. It established a factory for manufacturing tread-rubber. Production was started on 8-10-1979. Tread-rubber was dutiable under Tariff Item 16A(2) of the Schedule to the Act. At that time certain exemption notifications were in operation. According to the notification applicable to the year 1980-81, it is stated, a unit producing goods of a value of less than 5 lakhs was exempt from the provisions of the Act. The said exemption limit was raised to 15 lakhs for the year 1981-82.

2. On September 30, 1981, a search was conducted of the premises of the appellant by the officers of the Department. They found that a substantial quantity of tread-rubber (5807 kilograms) was removed from the factory without making an entry in the relevant records. They also recorded the statement of the Managing Partner of the factory in the presence of another partner. In this statement, the Managing Partner admitted not only that 5807 kgms. of tread-rubber was removed from the premises without making an entry but also that they were doctoring their accounts so as to show that their annual production was below the exemption limit. On the basis of the material gathered at the time of the inspection a show cause notice was issued to the appellant calling upon him to explain as to why his production during the said years be not estimated at a particular figure and why he should not be called upon to pay the appropriate duty as well as penalty in that behalf. (It is not necessary for the purposes of this appeal to mention the precise figures specified in the show cause notice; suffice to say according to the estimate figures the appellant was not entitled to the benefit of exemption notification.) The appellant showed cause, where after the Collector passed orders on 13-5-1983 confirming the show cause notice. The appellant preferred on appeal before the CEGAT. The Tribunal considered the various submissions made by the appellant at length but finding that there is no substance therein, dismissed the appeal.

3. In this appeal it is submitted by Mr. Anam, learned Counsel for the appellant that the estimate made by the Collector is arbitrary, based on no relevant material and is in the nature of a wild guess. He, therefore, requested that the matter may be remitted back to the Collector for further enquiry. We are unable to accede to the said submission. The quantum of tread-rubber produced in the appellant's factory during the said two years is a question of fact. Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into

consideration the concur rent finding of fact cannot be disturbed by us in this appeal under Article 136 of the Constitution. This is not also a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

4. It is argued by Mr. Anam that the only basis of the estimate of the production is the consumption of the electricity during the said period. What happened in this case is this : The Collector took the period from October 1979 to May 1980 as the base period. He ascertained the quantity of tread-rubber produced and the quantity of electricity energy consumed. Adopting the ratio between the consumption of electricity and the quantum of tread-rubber produced during the base period he estimated the production of tread-rubber during the disputed period on the basis of electricity consumed. Mr. Anam, submits that during the base period, the electricity meter was not recording properly and that it was running in the reverse direction. We have been unable to appreciate this contention. If the meter was running in a reverse direction during the base period, it would not have recorded any consumption. But evidently that was not what happened. The meter did record the consumption. One could understand the appellant saying that the meter recorded less than the actual consumption, but that was not his case. Nor could he produce any material in support of the said allegations. Mr. Anam relied upon a letter dated 16-11-1985 from the Assistant Executive Engineer, Electrical-Major Section, Changanacherry, in support of his contention. Firstly, this letter has been obtained long after the order of the Collector. Secondly, this letter says that the meter was running in reverse direction. This theory is unacceptable in the circumstances of the case, as pointed out hereinbefore.

5. It was then argued that the quantity estimated by the Collector is in excess of the installed capacity of the appellant's factory. Even this aspect has been dealt with and rejected by the Tribunal. It has been shown on the basis of the production figures disclosed by the appellant himself that his argument based upon the installed capacity cannot be accepted.

6. Mr. Anam contended that according to Rule 173E of the Central Excise Rules, the power consumption alone cannot be taken as the basis for estimating the production and that the several factors mentioned in the Rule must all be taken into consideration together. Sub-rule (1) of Rule 173E which alone relied upon reads as follows :

> Rule 173-E. Determination of normal production. - Any Officer duly empowered by the Collector in this behalf may fix the quantum and period of time when the production in the assessee's factory was considered normal by such officer having regard to the installed capacity of the factory, raw material utilisation, labour employed, power consumed and such other relevant factors as he may deem appropriate. The normal quantum of production during a given time so determined by such officer shall form the norm. The assessee shall, if so required by the said officer, be called upon to explain any shortfall in production during any time as compared to the norm. If the shortfall is not accounted for to the satisfaction of the said officer, he may assess the duty due thereon to the best of his judgment, after giving the assessee a reasonable opportunity of being heard.

7. On a reading of the Rule we cannot agree that the officer empowered by the Collector or the Collector cannot determine the normal production unless all the factors mentioned in the Rule are present simultaneously. The Rule does not say so nor is it capable of being so interpreted. In a case like the present one, where the accounts are found fabricated and untrue, the figures of raw-material utilised or the particulars of labour employed may not be avail able. It is not the case of the appellant that even though acceptable material with respect to these factors were available it was not considered.

8. The appeal accordingly fails and is dismissed. No costs.