

(2010) 03 JH CK 0019
Jharkhand High Court
Case No: None

Shri Krishna Laxmi Steel Udyog
Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: March 19, 2010

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 11, 35

Hon'ble Judges: Gyan Sudha Mishra, C.J; Rakesh Ranjan Prasad, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This writ petition has been filed by the petitioner for quashing the show cause notice dated 2nd January, 2009 as contained in Annexure-2 to this writ petition, intimating to the petitioner he has contravened the provisions of Rule -8 of the Central Excise Rules, 2002 as it has wrongly and willfully utilized CENVAT Credit of Rs. 1,43,50,657/- I.e. B.E.D. and Rs. 2,74,244/- as Education Cess and Rs. 1,48,634/- as Secondary and Higher Education Cess, during the month of July,2007 to December, 2008 i.e. from 6.7.2007 to 24.12.2008. The notice, therefore, indicated that the said amount of duty amounting to Rs. 1,43,50,657/- so paid by utilizing CENVAT Credit by the said assessee in contravention of Rule 8(3A) of Central Excise Rules, 2002 appear liable for recovery alongwith interest u/s 11 and 11AB of the Central Excise Act, 1944. The notice further indicated that the said amount is also liable for penalty under the provisions of Rule 25(1)(a) of Central Excise Rules, 2002 because as per the notice, the petitioner- assessee has not paid Central Excise Duty properly as assessed under Rule 6 of Central Excise Rules, 2002 during the months of May,2007 to November,2008 and for this purpose, several letters were written to the petitioner-assessee from time to time, which are the letters dated 9.7.2009, as contained in Annexure-4, and 16.7.2009, as contained in Annexure-6, but the petitioner had failed to respond to the notices as a result of which notice to show

cause was issued to it on 2nd January, 2009. The petitioner finally responded to the show cause notice and asserted that it has already paid the demand towards claim raised by the respondent-authority.

2. The Assistant Commissioner of Central Excise Division-III, Jamshedpur has been pleased to hold that the petitioner has failed to pay the demand, amounting to Rs. 97,65,215/- and, therefore, penalty under Rule 27 has also been held imposable on the petitioner as the petitioner is alleged to have defaulted and not paid the proper duty which they were required to pay under Rule 12 of the Central Excise Rules.

3. The petitioner, in fact, approached this Court by filing this writ petition, challenging the show cause notice issued to it, before filing the reply of the said show cause. But, this Court on 17.9.2009 had granted time to the respondents to seek instructions and file counter affidavit and the case was ordered to be posted after two weeks and till then no coercive step was ordered to be taken against the petitioner. However, during pendency of this writ petition, the petitioner filed a reply to the show cause and thereafter the Assistant Commissioner took up the matter and after considering the respective plea of the contesting parties passed an order on 23.2.2010, by which an amount of Rs. 97,65,215/- has been held payable by the petitioner and a sum of Rs. 5,000/- only has been imposed by way of penalty under Rule 47 of the Central Excise Rules for violation of Rules 4, 6 and 8 of the Central Excise Rules as the petitioner had not filed correctly the details of duty paid by them.

4. The petitioner, admittedly, has an alternative remedy u/s 35 of the Central Excise Act but for reasons best known to the petitioner, it has straightway come to this Court and attempted to justify that no amount by way of Excise Duty is payable by the petitioner to the respondent-authority.

5. This part of the dispute, obviously is factual in nature and the same cannot be allowed to be contested by way of a writ petition specially where the petitioner is not without a remedy. The petitioner, therefore, is at liberty to approach the alternative Forum for redressal of its grievance. It is obvious that any incidental relief to which the petitioner may be entitled under the law, will also be allowed to be raised before the competent authority.

6. The writ petition is, therefore, dismissed as premature.