courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 25/10/2025

Caltradeco Steels Sales (P) Ltd. Vs Dy. Dir., Dir''rate Gen. of A.E. (CE)

Writ Petition No. 1113 of 1998

Court: Calcutta High Court

Date of Decision: Feb. 1, 1999

Acts Referred:
Customs Act, 1962 â€" Section 110, 110(3), 110(4)

Citation: (1999) 65 ECC 30 : (1999) 111 ELT 25

Hon'ble Judges: Ajoy Nath Ray, J

Bench: Single Bench

Advocate: D.P. Pal, for the Appellant; N.C. Roychowdhury, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ajoy Nath Ray, J.
The Excise Authorities have issued a show-cause notice dated 22-7-1998 against one M/s. Sona Biscuits Pvt. Ltd.,

inter alia, for alleged evasion of payment of Central Excise duty amounting to nearly Rs. 111 /2 lakh.

2. The writ petitioners" grievance, however, is that at the time of search and seizure relating to Sona Biscuits, their employee, one Senapati

happened to be present at the premises and a file of papers and Rs. 8,620/- in cash which were found on his person were also seized by the

Excise Authorities.

3. Dr. Pal appearing for the petitioners has argued that the connection between Sona Biscuits and the darwan (peon) who was casually present is

non-existent. Thus the search and seizure has been extended unreasonably to affect the writ petitioner also, instead of limiting the effect of that to

Sona Biscuits alone.

4. Dr. Pal has also argued that in view of Section 110 of the Customs Act, and its extension to excise matters made by Notification No. 68/63-

C.E., dated 4th May, 1963, six months having elapsed without the issuance of a show-cause against the writ petitioners, all the seized matters are

liable to be returned by reason of lapse of time.

5. Dr. Pal in fact placed great emphasis on the second of the above two aspects and thereafter Mr. Roychowdhury replied. He submitted that u/s

110, although goods might be liable to be returned after six months, and this might include the cash part, yet return of documents was not similarly

circumstanced as this is governed by sub-sections (3) and (4) and not by the first two sub-sections which cover goods.

6. In my opinion, Mr. Roychowdhary"s submission is right.

7. He also argued that by reason of the interim order passed during vacation on 21-5-1998, the respondents were permitted to continue

investigation but they were not to take further steps on the basis of the seizure, and the seized materials were also not to be dealt with in any

manner by them without obtaining prior leave of Court. Mr. Roychowdhury submits that the terms of this order of restraint really completely tied

up the hands of the respondents. They would not be able to issue a show-cause notice at all and thus, the lapse of six months as far as the cash is

concerned is also without any material effect in this case.

8. In my opinion, Mr. Roychowdhury"s submission is again right.

9. So far as the nature of the documents of the petitioners and the history or nature of the cash money are concerned, the court has no materials

before it to-day. Because of a wide interim order the respondents have not had an opportunity to issue a show-cause notice even if they thought on

their investigation that such a show-cause notice was called for. Whether such show-cause notice will be on the basis of the Customs Act or the

Excise Act or some other Act, it is not possible to-day to predict. However, in no view of the matter can it be said that the seizure in May, 1998

from Senapati who was found on Sona Biscuits premises was unreasonable or mala fide. The respondents are not expected to know which

darwan at Sona Biscuits premises belongs to which trader.

10. Mr. Roychowdhury also submitted that there were proceedings against the writ petitioners in regard to alleged "Modvat" irregularities but Dr.

Pal was careful to point out that on an opinion given by a third Member of the CEGAT those proceedings have now been quashed and the writ

petitioners are free. Whether the instructions of Mr. Roychowdhury that the Supreme Court has been moved yet or not are right, one need not

require into to-day.

11. In these circumstances, the search and seizure being not unreasonable in the facts and circumstances which prevailed in May, 1998 at the Sona

Biscuits premises, the writ application is dismissed. All interim orders will be vacated with immediate effect. The respondents will be permitted to

take steps in accordance with law both in regard to the documents of the petitioners and the cash part. In case any copies of the documents are

asked for by the petitioners, those will be furnished by the respondents at the cost of the writ petitioners.

12. Since I have disposed of the writ petition by accepting the reasonableness of the initial search and seizure and by negativing Dr. Pal''s

submission that by lapse of time alone the documents and the cash fall to be returned immediately, the other points are kept open.

13. It is within possibilities even hereafter that a second writ might have to be filed by the writ petitioners if they wish to agitate the point of total

lack of connection between the writ petitioners and Sona Biscuits. At this later stage the further lapse of time might also be relevant.

14. Rule, if any, issued will stand discharged.

15. Interim orders will be vacated.

16. There will be no order as to costs.

17. All parties to act on a singed xerox copy of this dictated order on the usual undertakings.