

(2010) 02 CAL CK 0063
Calcutta High Court
Case No: CEXA No. 25 of 2009

Sona Biscuit Limited

APPELLANT

Vs

Commissioner of
Central Excise

RESPONDENT

Date of Decision: Feb. 3, 2010

Citation: (2010) 258 ELT 502 : (2011) 22 STR 354

Hon'ble Judges: Sengupta, J; Kalidas Mukherjee, J

Bench: Division Bench

Advocate: Ashoke Kumar Bhattacharjee, for the Appellant; N.C. Roy Chowdhury and S.K. Saha, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The Court : This appeal was admitted on the following point:

Whether the Tribunal substantially erred in law in not considering that the duty has been demanded on the basis of an unauthorised and unauthenticated piece of paper i.e. Annexure C to the show cause notice which did not contain any signature of departmental officer and there were no party-wide, date-wise clearances?

2. In this connection it is apposite to set out the contents of the Annexure C at page 85:

DETAILS OF CALCULATION

Assessable value on which CF Central Excise duty payable duty has not been

Rs. 22,12,890.00

Rs. 1,77,031.00

Rs. 22,73,682.00

Rs. 1,81,889.00

Rs. 12,05,477.00

Rs. 96,488.00

Rs. 85,76,434.45

Rs. 6,96,114.72

3. It is an admitted position that this Annexure C is part of the show cause notice and there is no challenge against the show cause notice with regard to the authority or signature or authenticity. However, annexure of the same was under challenge.

4. The short fact needs to be recorded hereunder:

The Assessee factory was searched and the revenue officer found that there has been large amount of finished stock and alleged removal of unauthorised stock and thereby evaded excise duty. On the basis of the result of the search and seizure show cause notice was issued. The Additional Commissioner, viz., Central Excise heard on cause being shown by the Assessee. However, the Commissioner of Central Excise viz., the Adjudicating Authority over ruled the objection and imposed duty payable and also penalty. This order of the Adjudicating Authority was taken to appeal and the Commissioner of Appeal found that the Annexure C is an unauthenticated piece of paper without any signature by the departmental officers containing two sets of figures viz., assessable value and central excise duty payable. It has no reference to any records and statements or any details about how and wherefrom these figures have been calculated. This by no means, is acceptable as details of calculation without any mentioning of party-wise, date-wise clearance and period involved therein. So the contention of the Appellant that the figures was arbitrary cannot be brushed aside and thereafter the Appellate Authority, Central Excise set aside the entire proceeding and impugned order also.

5. It is clear that on the aforesaid ground the appeal was allowed even without giving any chance to revenue to proceed afresh on supply of necessary information. Naturally, the revenue took this matter to Tribunal concerned and the Tribunal concerned after hearing the parties upheld the order of adjudication partly and the part matter viz., involving physical verification of stock and issue relating to Bhagwati Food Products for re-adjudication on remand. Thereafter liberty was given to Adjudicating Authority to decide on the question of imposition of penalty.

6. From the judgment and order of the learned Tribunal we do not find that any argument was advanced in support of the aforesaid findings of the Appellate Authority. Hence this appeal was filed and admitted.

7. Mr. Ashoke Kumar Bhattacharjee, learned Counsel for the Appellant submits that it is the practice and procedure of this department to issue authenticated and signed annexures enclosed to the show cause notice and this is an unsigned document though it is annexed to the show cause. Moreover, the content thereof so vague that it could not be understood under what head what amount is chargeable. Therefore, he submits that the Appellate Authority was justified in recalling and reversing the entire thing.

8. In support of his submission he has brought a decision of Bombay High Court reported in 1987 (32) E.L.T. 534 (Bom.) : (1987) 13 ECR 948 and he has drawn our attention to paragraph 6.

9. We have noted this paragraph and it appears to us that this judgment has not dealt with the question of necessity of authentication and signature of the annexure rather it went on the basis of vagueness.

10. However, after observing this the Division Bench held in the event the party concerned understands and proceeds accordingly the plea of vagueness cannot be taken at a later stage. According to us this is not the authority to support the contention of Mr. Bhattacharyya that annexure to the show cause has to be authenticated and signed. Mr. Bhattacharyya despite chance being given was unable to find any rules or prescribed format prescribed in the rules or Acts whereby and whereunder the Revenue Officials are obliged to sign and authenticate it.

11. It may be a practice and procedure but unless there is a rule to that effect the practice and procedure cannot make any binding effect. We have already set out the text of the annexure "C" which speaks of mere calculation and/or the quantum which is to be found in the body of the show cause notice. Mr. Roychowdhury supports the judgment of the Learned Tribunal and he also contends that he has not found any rule requiring to authenticate and sign any annexure.

12. Under those circumstances it is difficult for us to accept the contention of Mr. Bhattacharyya, that the annexure to the show cause notice in absence of any express provision in the Rule needs to be signed and authenticated. The plea of the said document being unauthorised is simply misplaced in the context of the facts and circumstances of the case when a document is being accompanied with the show cause notice which has been signed by an appropriate authority admittedly. Therefore, presumption is that an unsigned document enclosed thereto must have been accepted by the authority.

13. Accordingly, this plea is overruled.

14. We, therefore, do not find any substance in this appeal hence it is dismissed,

15. However, liberty is given to approach the appropriate forum and this judgment will not prevent and prejudice from doing so, if so advised.

16. Let urgent xerox certified copy of this order be made available to the parties, if applied for.