

Shri Vivekanand Mills Ltd., and Another

Vs

Union of India and Others

Civil Appeal No. 1965 of 1970

(D. A. Desai, V. B. Eradi JJ)

17.07.1984

ORDER

1. This appeal by certificate under Article 133(1)(a) of the Constitution granted by the High Court of Gujarat is directed against the judgment of the High Court dismissing the Special Civil Application 629 of 1964 filed by the present appellants in which legality and validity of the two notices dated October 14, 1963 bearing No. 11/63 covering the period from July 15, 1963 to October 14, 1963 making a demand of Rs. 4895.85 np and the second notice dated January 21, 1964 bearing No. 1/64 covering the period from June 28, 1962 to July 14, 1963 making a demand of Rs. 47,017.75 np were questioned on the ground that the case would be governed by Rule 10 of the Central Excise Rules, 1944 and therefore, the notices were beyond the prescribed period of limitation. The Union of India contested the petition contending that the case would be covered by Rule 10-A.
2. The High Court held that the case would be governed by Rule 10-A and therefore, the contention that the notices were beyond the period of limitation was negatived. Hence this appeal by certificate.
3. Mrs. P. S. Shroff, learned counsel for the appellants very persuasively submitted that once the appellants were in a position to prove that gate passes were issued under Rule 52-A, it would appear that Rule 42 was complied with implying an assessment having been made and therefore, the case would be governed by Rule 10 and not 10-A. Consequently it was urged that the High Court was in error in holding that the case would be governed by Rule 10-A.
4. The appellants moved the High Court soon after filing replies to the two notices but before adjudication by the statutory authority Mrs Shroff, learned counsel for the appellants urged that in the High Court the respondent appeared and filed a counter-Affidavit in which the relevant facts were not disputed. She further pointed out that the fact that gate passes were issued was not disputed. It was urged that under the scheme of the relevant rules gate pass for clearance of excisable goods can only be issued after assessment of excise duty and payment thereof. Therefore, it was urged that the existence of a valid gate pass would permit an inference that assessment was completed. Proceeding along it was said that if assessment was completed ipso facto Rule 10 would apply and the demand would be barred by limitation. We do not propose to express any opinion this point as in our opinion the matter will have to be remitted to the authorities under the Central Excise Act. However, for the purpose of establishing that the demand was time-barred under Rule 10 it has to be proved that the assessment of duty has been made. Mrs Shroff urged with some vehemence that once appellants produced the gate pass the burden would be on the respondents to show that there was no assessment of duty prior to the issuance of the gate pass. She said that gate pass provides tangible evidence that assessment any payment of duty were completed and the next stage

of transport of the goods was undertaken. May be that may be one view of the facts but ordinarily in a writ petition facts are not investigated. Merely from existence of gate pass one cannot affirmatively conclude that assessment was done. The burden is on the appellants to affirmatively establish the same. On the materials placed before the High Court in the writ petition the High Court was justified in holding that it was not proved to its satisfaction that assessment had been done and High Court has rightly held that the case would be governed by Rule 10-A and not by Rule 10. However, as the appellants have appeared in responded to the notices and the authorities under the Central Excise Act have yet to investigate the facts alleged on either side, the question whether notices were barred by limitation is kept open and the appellants will be at liberty to raise the contention before the statutory authorities. In other words, that point need not be taken as concluded by the decision in the writ petition and rejection of this appeal. With this reservation, the appeal is dismissed with no order as to costs.

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