

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 24967 of 2015

Date of decision: 22.3.2016

M/s NVR Forgings

.....Petitioner

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr. Jagmohan Bansal, Advocate for the petitioner(s).

Mr. D.D.Sharma, Advocate for the respondents in CWP No.24967 of 2015.

Mr. Kamal Sehgal, Advocate for the respondents in CWP No.26321 of 2015.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP No.24967 and 26321 of 2015 as according to the learned counsel for the parties, the issues involved in both the petitions are identical. However, the facts are being taken from CWP No.24967 of 2015.

2. In CWP No.24967 of 2015, the petitioner prays for quashing the order dated 28.8.2015, Annexure P.8 passed by the revisional authority rejecting the revision application filed by it and upholding the order in appeal dated 21.8.2012.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.24967 of 2015 may be noticed. The petitioner is engaged in the manufacture and export of hand tools falling under Chapter Heading 82 of the Central Excise Tariff Act, 1985. During the assessment year 2009-10, the petitioner availed benefit of Small Scale Industries Exemption notification dated 1.3.2003. As per Rules 18 and 19 of the Central Excise Rules, 2002 (in short, "the Rules"), export of goods is exempt from duty. Even inputs can be procured without payment of duty. Apart from clearing the goods in the domestic market, the petitioner exported few consignments during the assessment year 2009-10. The petitioner exported all the consignments through merchant exporter who applied Form H. Form H had been prescribed under Central Sales Tax Act, 1956 as proof of export of goods. The respondents issued show cause notice dated 25.2.2010 whereby the petitioner was called upon to pay duty amounting to ₹ 3,06,417/- alleging that though it had furnished bond but had not followed the export procedure in as much as it had failed to furnish ARE 1 and proof of export of goods as required under Rule 19 of the Rules. Vide letter dated 24.2.2011, the petitioner requested the adjudicating authority to grant some time to file reply to the show cause notice. The adjudicating authority passed order dated 16.3.2011, Annexure P.4 confirming the demand. It was held that though the petitioner had executed bond, it had failed to comply with the condition laid down under the relevant notification. The adjudicating authority also imposed penalty of ₹ 30,000/- under Rule 25 of the Rules. Aggrieved by the order, the petitioner filed appeal before the Commissioner (Appeals), Central Excise,

Chandigarh. The petitioner inter alia pleaded that it was new in the field and was not aware that copies of Form H duly attested were required to be submitted to the department. There was no dispute with regard to the factum of export of goods. The Commissioner (Appeals) vide order dated 21.8.2012, Annexure P.5 dismissed the appeal and upheld the penalty apart from demand of duty. The petitioner moved revision application before the Government of India, Ministry of Finance. According to the petitioner, as per Section 35EE of the Act, a revision application against the order passed by the Commissioner (Appeals) lies before the Central Government. However, in the provision, it is not specified that who will exercise the powers of the Central Government. The Central Government had delegated its power to Joint Secretary to Government of India. The order dated 28.8.2015, Annexure P.8 had been passed by the Joint Secretary who was Commissioner of Central Excise and Customs. Vide order dated 28.8.2015, Annexure P.8, the revisional authority dismissed the revision application of the petitioner holding that the petitioner was bound to comply with procedure of ARE-1 which it had failed. Further, the petitioner was registered with the department, so it was not entitled to benefit of simplified export procedure and Form H was not a valid document as proof of export. Hence the instant petitions by the petitioner.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner submitted that the revisional power has been exercised by officer of the same and equal rank who had upheld the order of impugned demand and penalty and dismissed the appeal i.e., Commissioner (Appeals). Reliance was placed on judgment of this

Court in *M/s Prakash Pipes Industries Limited, Mayar, Hisar vs. State of Haryana and another*, CWP No.9415 of 1990, decided on 21.10.2015 in support of the submission.

6. On the other hand, learned counsel for the respondents besides supporting the impugned order relied upon judgment of a Single Bench of Delhi High Court in *Labh Singh Atma Singh vs. Union of India and others*, AIR 1970 Delhi 171 and judgment of Apex Court in *Jayantilal Amratlal Shodhan vs. F.N.Rana and others*, AIR 1964 SC 648.

7. In *M/s Prakash Pipes Industries Limited's* case (supra) to which one of us (Ajay Kumar Mittal,J.) was a member, while considering identical situation, after examining the relevant case law on the point, it was held that the revision by the officer of the same rank was not permissible. It was recorded as under:-

“5.The matter is no longer res integra. This Court in *Tripoti Udyog Ltd. v. State of Haryana* (2010) 37 PHT 521 (P&H) while dealing with the identical issue had held that the revision by officer of the same rank was not permissible. It was recorded as under:-

“Re. Que.(2):

Learned counsel for the assessee submits that the Deputy Excise and Taxation Commissioner was acting as assessing authority and though revisional powers were delegated to the Deputy Excise and Taxation Commissioner, the said powers could be exercised by an officer only in relation to orders passed by his subordinates and not in respect of orders passed by officer of the same or higher rank. He relies upon judgment of Andhra Pradesh High Court in *Sri Satya Winery & Distillery Private Ltd. v. State of A.P.* (2000) 117 STC 291 and submits that the question of law

may be read accordingly. The question appears to have been wrongly formulated. It has been pointed out that the judgment of Andhra Pradesh High Court in Sri Satya Winery has been accepted by the State of Haryana and instructions dated 12.10.1990 have been issued. Accordingly, the Sales Tax Tribunal has been holding that revision by officer of the same or lower rank was not permissible. By way of instances, he has produced following orders of the Tribunal:-

I. M/s Kailashpati Cotton (P) Ltd., Siwani v. State of Haryana, (2001) 18 PHT 576 (STT Hr).

II. M/s S.R. Oils & Fats Ltd., Bahalgarh v. State of Haryana, (2002) 19 PHT 272 (STT Hr).

III. M/s K.C. Textiles Ltd., Pandupindara, Jind v. State of Haryana, (2002) 19 PHT 525 (STT Hr).

IV. M/s Intertia Industries Ltd., Rewari v. State of Haryana, (2003) 21 PHT 442 (STT Hr).

V. M/s Ram Partap Bansal and Co. P. Ltd., Tohana v. State of Haryana, (1994) 4 PHT 530 (STT Hr).

We accordingly answer the question in favour of the assessee and against the revenue and hold that the revision by officer of the same rank was not permissible.”

6. Again in the case of the petitioner itself, this Court vide order dated 5.2.2015 in CWP No. 9683 of 1990, considering identical issue wherein notice issued under Section 40(2) of the Act for revising the assessment order by the officer of same rank was challenged, the Department had withdrawn the said notice. However, liberty was granted to the State to issue fresh notice under Section 40(2) of the Act in accordance with law without prejudice to the rights of the parties.”

8. In the present case, the impugned order was passed by the Joint Secretary to Government of India who was also Commissioner of Central Excise and Customs. Thus, the order in appeal as well as revisionary order

had been passed by the officers of the same rank which is not permissible as per law. Adverting to the judgments relied upon by the learned counsel for the respondents, it may be noticed that the said decisions were based on individual fact situation involved therein. Thus, the respondents cannot derive any advantage from the said pronouncements.

9. In view of the above, the petitions are allowed. The impugned order dated 28.8.2015, Annexure P.8 in CWP No.24967 of 2015 and order dated 16.9.2015, Annexure P.5 in CWP No.26321 of 2015 are set aside. However, liberty is granted to the State to proceed afresh in accordance with law but without prejudice to the rights of the parties.

(Ajay Kumar Mittal)
Judge

March 22, 2016
'gs'

(Raj Rahul Garg)
Judge