(2013) 01 BOM CK 0222

In the Bombay High Court

Case No : Writ Petition No. 2157 of 2011

Abhirup Exports Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 295 ELT 39 : (2014) 46 GST 1

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Sushanth Murthy instructed by Madhur R. Baya, for the Appellant; Neeta V. Masurkar with Shri H.V. Mehta, for the Respondent

Judgement

1. The Petitioner has sought to challenge inter alia an order dated 9 October, 2007 of the Development Commissioner, SEEPZ SEZ imposing a recovery of Rs. 88.33 lakhs towards the duty drawback and a fiscal penalty of Rs. 5 lakhs on the Director. The order of the adjudicating authority has been confirmed in appeal by the Joint Secretary to the Government of India in the Ministry of Commerce and Industry being the Appellate Authority on 8 September, 2010. The principal challenge is that though the notice to show cause dated 10 August, 2004 was issued on the basis of the report submitted by the Office of the Commissioner of Central Excise and Customs, Nagpur, that report was not supplied in spite of a demand and hence, there has been a breach of the principles of natural justice.

2. The notice to show cause expressly refers to the report of the Commissionerate of Central Excise and Customs, Nagpur in the following terms;

This Show Cause Notice is issued on the basis of the report submitted by the Office of the Commissioner of Central Excise & Customs, Nagpur and also is without prejudice to any other action that may be taken against you under any other Law for the time being in force in the Union of India.

The Development Commissioner in paragraph 8 of the order of adjudication specifically recorded that the Advocate for the Petitioner had sought a copy of the document submitted by the Customs authorities on which the notice to show cause had placed reliance. Before the Appellate Authority, the Petitioner had filed written submissions (Exh.1) drawing attention to the fact that the report on the basis of which the notice to show cause has been issued had not been made available despite a request for a copy. A specific ground has been raised in the Petition filed before this Court (Ground (B) of Paragraph 31]. A copy of the report which is in the form of a communication dated 21 November, 2003 of the Commissionerate of Central Excise and Customs to the Joint Development Commissioner is now annexed to the affidavit in reply. There was no reason or justification on the part of the Department to withhold documentary material upon which specific reliance was placed on the notice to show cause during the course of adjudication. Failure to disclose the report, would, hence, amount to a breach of the principles of natural justice. That apart, upon perusing the order of the adjudicating authority, it is evident that in paragraph 11 which contains the discussion on merits, the only observation is as follows:

I have carefully considered the facts of the case and I have also gone through records of the unit and found the unit guilty of violating the provisions para 6.8(b) of FT/Exim Policy by effecting DTA sale without obtaining the prior permission of the Development Commissioner, SEEPZ SEZ. It is also proved beyond doubt that the unit has fraudulently filed the DBK claim and obtained the duty draw back of Rs. 88.33 lakhs.

The Appellate Authority has similarly disposed of the entire appeal with only the following discussion:

The Committee enquired from the firm whether they have complied with the orders of Appellate Committee dated 20-7-2010 directing the firm to submit its accounts to DC SEEPZ. The representative of DC SEEPZ clarified that the firm has not complied with the same. Hence the Committee concluded that the firm was guilty of violating the provision of para 6.8(b) of FT/EXIM Policy by effecting DTA sale without obtaining the prior permission of the DC, SEEPZ SEZ. The Committee also noted that the firm has fraudulently filed the duty drawback claim and obtained the duty drawback of Rs. 88.33 lakhs. Accordingly, the appeal was dismissed by the committee and the orders passed by the DC, SEEPZ SEZ, Mumbai dated 9-10-2007 was upheld.

3. In our view, the manner in which both the authorities have dealt with the case is thoroughly unsatisfactory, there being an apparent violation of the principles of natural justice. The charges against the Petitioner are serious involving a fraudulent claim of duty drawback, but that does not obviate the need to comply with either the principles of natural justice or for that matter, the need for the Appellate Authority to write a proper reasoned order. A failure to comply with the principles of natural justice results in a situation where, in a challenge under Article 226 of the Constitution, this Court is constrained to set aside the order and to remand the proceedings back to the adjudicating authority. The fact that

the report has been disclosed in the affidavit in reply would indicate that there was no reason or justification not to do so at the earlier stage. In these circumstances, and without this Court expressing any view on the merits of the allegations against the Petitioner, we set aside the impugned order of the Appellate Authority dated 7 March, 2011 (Exh.M) which in turn confirmed the order of the adjudicating authority dated 9 October, 2007 (Exh.G). In consequence, we restore the proceedings back to the Development Commissioner, SEEPZ for passing a fresh order in accordance with law. We direct that the Petitioner shall appear before the adjudicating authority at 12 noon on 28 January, 2013 on which date, directions will be given in regard to the date of hearing. Since the report which is sought to be relied upon in the show cause notice has already been annexed to the affidavit in reply, no further disclosure on that count is necessitated. The Petition is accordingly disposed of. There shall be no order as to costs.

