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(2014) 04 AHC CK 0261

In the Allahabad High Court

Case No : Writ Tax No. 1535 of 2007

Aroma Chemicals APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Citation : (2014) 310 ELT 427

Hon'ble Judges : Shashi Kant, J;Rajes Kumar, J

Bench : Division Bench

Advocate : Nishant Mishra, Advocate for the Appellant; A.K. Nigam and Ajai Bhanot, C.S.C, Advocate for the Respondent

Judgement

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1. Heard Sri Pankaj Bhatia, holding brief of Sri Nishant Mishra learned counsel for the petitioner and Sri B.K.S. Raghuvanshi, learned counsel for the State. By means of this writ petition, the petitioner is challenging the order, dated 5-9-2007 passed by the respondent No. 3. The Deputy/Assistant Commissioner, Customs & Central Excise, Division Moradabad, Moradabad.

2. The brief facts of the case are that the respondent No. 3 has issued a show cause notice, dated 28-8-2007, which has been served upon the petitioner on 29-8-2007. According to the petitioner, reply was filed on 4-9-2007. However, it is a case of the respondent that the reply has been received on 6-9-2007 and the impugned order has been passed on 5-9-2007. Learned counsel for the petitioner submitted that in the show cause notice, seven days time has been given to file reply, which expires on 5-9-2007, which was very short and normally 30 days time is allowed to file the reply.

3. The petitioner has been required to show cause within 7 days. In paragraph 17 of the writ petition, it is stated that the said show cause notice has been received on 29th August 2007 and the petitioner has filed the reply on 4th September, 2007, the copy of the reply is Annexure 03 to the writ petition, in the

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reply to show cause notice, apart from the challenge of the issue of the show cause notice on the ground that the rebate has already been allowed and by issuing a fresh show cause notice, the order cannot be reviewed. The petitioner has also stated that no details of alleged intelligence report has been provided so as to enable the petitioner to file/contest the allegations. The petitioner requested that the relied upon documents and the intelligence report be provided to the noticee immediately. The impugned order has been passed on 5th September, 2007.

4. The learned counsel for the petitioner submitted in the show cause notice, 7 days'' time was allowed to file the reply which was too short, while normally 30 days time is allowed. The notice itself was served on 29-8-2007, therefore, the impugned order passed before the expiry of 7 days was wholly unjustified and in violation of Principles of Natural Justice.

5. Sri B.K.S. Raghuvanshi, learned counsel submitted that from the order it appears that the reply was not filed by the petitioner and therefore, he proceeded to pass an ex parte order. Further, he submitted that since the CENVAT Credit has wrongly been availed on raw materials, while such raw materials did not arrive inside the factory premises of the petitioner, therefore, the claim of rebate has been rightly rejected.

6. We have considered the rival submissions and perused the record. We are of the view that the impugned order passed is in violation of the Principles of Natural Justice. The notice was issued on 28-8-2007. 7 days'' time has been allowed to file the reply. Certain documents had been relied upon in the show cause notice. In paragraph 15 of the writ petition, it is stated that the said show cause notice has been received by the petitioner on 29th August, 2007, therefore, the petitioner has 7 days'' time to file the reply. According to the petitioner, the reply was filed on 4-9-2007. In paragraph 16 of the writ petition, it is stated that the reply of the show cause notice was filed, which has been replied by the paragraph 18 that the reply was not filed within time. It is further stated that it has been replied on 6th September, 2007 when the order was passed. The 7 days time granted to file the reply appears to be less and in as much as the authority should have waited up to 6th September 2007, while the order was passed ex parte on 5-9-2007. Moreover admittedly the documents relied upon in the show cause notice have not been provided to the petitioner.

7. In view of the aforesaid facts and circumstances, without going into the merits of the case, we are of the view that the impugned order has been passed without giving proper and reasonable opportunity of hearing to the petitioner, therefore, the impugned order liable to be set aside and is hereby set aside. In the interest of justice the matter is relegated to Adjudicating Authority to pass fresh order after giving opportunity of hearing in accordance with law.

8. Adjudicating Authority is directed to pass order within a period of six months from the date of presentation of certified copy of this order. The writ petition

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stands allowed, as stated above.

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