(2014) 04 AHC CK 0262

In the Allahabad High Court

Case No : Writ Tax No. 1578 of 2007

Arora Aromatics APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Citation : (2014) 310 ELT 429

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

Bench : Division Bench

Advocate : Pankaj Bhatia, Advocate for the Appellant; R.M. Pandey and S.K. Misra, Advocate for the Respondent

Judgement

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1. Heard Sri Pankaj Bhatia, learned counsel for the petitioner and Sri B.K.S. Raghuvanshi, learned counsel for the respondents. By means of this writ petition, the petitioner is challenging the orders dated 6-9-2007 passed by the respondent No. 3, Assistant Commissioner, Customs & Central Excise, Division Moradabad, Moradabad.

2. The brief facts of the case are that the respondent has issued a show cause notices dated 30-8-2007 in respect of 28 rebate claims which have been claimed and allowed by the Department relating to the export of their manufactured product. In the show cause notice, the allegation is that from the intelligence, it has been gathered that the input i.e. raw materials has not been received in the factory premises of M/s. Arora Aromatics, Sambhal, Moradabad and fraudulently availed the Cenvat credit on the basis of faked and bogus documents and also the party has utilized the wrongly and inadmissible Cenvat credit towards the payment of Central Excise duty on the goods exported and as such the rebate of Central Excise duty is not admissible to the party because duty so paid by them is out of wrongly and fraudulently availed Cenvat Credit against the inputs (raw materials) which had not been received in the factory of the party at all.

3. The petitioner has been required to show cause within 7 days. In paragraph 19 of the writ petition, it is stated that the said show cause notice has been received on 3rd September, 2007 and the petitioner has filed the reply on 6th September, 2007, the copy of the reply is Annexure 10 to the writ petition. In the reply to show cause notice, apart from the challenge 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 allegation. 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 6th September, 2007. The contention of the petitioner is that in the impugned order, it is stated that no reply has been filed by the petitioner and no request for personal hearing.

4. The learned counsel for the petitioner has made an allegation of the mala fide in the writ petition stating that the concerned officer was at Allahabad on 6-9-2007 for swearing of the affidavit in another writ petition, therefore, the order could not be passed on 6th September, 2007. But the same has not been considered. In the show cause notice, 7 days'' time was allowed to file the reply. The notice itself was served on 3-9-2007, 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, which has been utilized in manufacturing of the product, on which the rebate has been claimed, as such raw materials did not arrive inside the factory premises of the petitioner, therefore, the claim 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 30-7-2007. 7 days'' time has been allowed to file the reply. Certain documents had been relied upon in the show cause notice. In Paragraph 17 of the writ petition, it is stated that the said show cause notice has been received by the petitioner on 3rd September, 2007, therefore, the petitioner has 7 days'' time to file the reply. According to the petitioner, the reply was filed on 6-9-2007. In Paragraph 20 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. Thus, in the counter affidavit, it is admitted that the reply has been received on 6th September, 2007. It is unfortunate that even though, the reply was received on 6th September, 2007 but in the impugned order, it is alleged that no reply has been filed and no request has been made for the personal

hearing.

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 in gross violation of Principles of Natural Justice and therefore, is not sustainable and is liable to be set aside. The impugned order dated 6-9-2007 is hereby set aside. 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 stands allowed as stated above.