

(2016) 02 DEL CK 0381

In the Delhi High Court

Case No : Writ Petition (C) No. 854 of 2015 and C.M. No. 1499 of 2015 (for stay)

Balaji Metal

APPELLANT

Vs

Commissioner of Central Excise, Delhi-II

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Citation : (2016) 336 ELT 522

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : V.V. Gautam and Rakesh Puri, Advocates, for the Petitioner; Ms. Sonia Sharma, Sr. Standing Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

1. The Petitioner is aggrieved by an order dated 15th October, 2014 passed by the Commissioner of Central Excise (CCE) declining the Petitioner's request for cross-examination of the witnesses mentioned in the show cause notice (SCN) issued by the CCE to the Petitioner on 4th April, 2013.
2. In response to the above SCN, the Petitioner filed an interim reply on 29th August, 2014 stating inter alia that it would file a final and conclusive reply after it is permitted to cross-examine the witnesses of the Department.
3. Clearly, the above request was premature. The CCE should have simply stated that and postponed the decision on the request of the Petitioner for cross-examination of the Department witnesses till such time a final reply was filed to the SCN.
4. Learned counsel for the Petitioner drew the attention of the Court to the Adjudication Manual issued by the Department as well as the decision of this Court in *Basudev Garg v. Commissioner of Customs* - 2013 (294) E.L.T. 353 (Del.) and the decision of the Tribunal in *Commissioner of Central Excise, Chennai v. Eutectoid Steels* - 2010 (250) E.L.T. 413 (Tri.-Chennai). On the other hand, learned counsel for the Department submitted that the request itself was

premature and the Petitioner could not insist on first cross-examining the witnesses of the Department before filing the final reply to the SCN. She added that the Department will abide by the Manual as and when the stage is reached for cross-examining the witnesses of the Department.

5. This Court while directing notice to issue in this petition on 30th January, 2015 had stayed further adjudication pursuant to the SCN dated 4th April, 2013.

6. It is plain that the Petitioner was under a misconception that the Petitioner could postpone the submission of the final reply to the SCN till the Department witnesses were made available for cross-examination by the Petitioner. That is not the requirement of the law explained in the above decisions as cited by the Petitioner. Even the Department Manual does not state that an Assessee can choose to file a final reply to the SCN after the cross-examination of the Department's witnesses.

7. However, on account of the interim order passed by this Court, there has been no progress in the matter since 30th January, 2015. In the circumstances, the following directions are issued :

(a) The Petitioner will submit a final reply to the SCN, on the basis of what has been made available to the Petitioner, within a period of four weeks from today and in any event not later than 14th March, 2016.

(b) In the final reply, the Petitioner will indicate the names of the witnesses of the Department whom the Petitioner wishes to cross-examine.

(c) The adjudicating authority will examine and decide the aforementioned request of the Petitioner in terms of the Adjudication Manual of the Department and the law explained in *Basudev Garg v. Commissioner of Customs* (supra) within two weeks of the receipt of such request. The adjudicating authority will fix a time bound schedule for the cross-examination such of those Department's witnesses in terms of the decision on the Petitioner's request in that behalf. It will be open to the Petitioner to raise a ground of challenge to denial of the cross-examination of any of the Department's witnesses at the stage of challenge, if any, to the adjudication order if the circumstances so warrant.

(d) The Petitioner will not seek any unnecessary adjournments and will participate in all the hearings before the adjudicating authority.

(e) The adjudicating authority will endeavour to conclude the adjudication proceedings and render a decision within a period of eight months after the commencement of hearing consequent upon the filing of the final reply by the Petitioner to the SCN.

8. The writ petition is disposed of in the above terms.

CM No. 1499/2015 (for stay)

9. The stay granted by this Court by the order dated 30th January, 2015 is

vacated.

10. The application is disposed of.