(2004) 11 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1627 of 2004 16 November 2004

Birla Aircon APPELLANT

Vs

CE and Cu and Another RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2006) 154 TAXMAN 360

Hon'ble Judges : R.K. Agrawal, J;Mr. R.K. Agrawal, J;Mr. Dilip Gupta, J;Dilip Gupta, J

Bench : Full Bench

Advocate : Mr. Rakesh Ranjan Agrawal, for the Assessee Mr. Ramendra Pratap Singh, Mr. A.N. Mahajan, for the Revenue, for the Appellant;

Judgement

R.K. Agrawal, J.

By means of the present writ petition filed under article 226 of the Constitution of India, the petitioner, M/s. Birla Aircon, seeks the following reliefs

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 27-7-2004, and 29-3-2004. passed by the Commissioner, Excise and Customs, Range I, Meerut, respondent No. 1 and Assistant Commissioner of Income Tax, Circle 1, Meerut, respondent No. 2, respectively (annexures Nos. 8 and 11 to the writ petition).

(ii) Issue any other writ, order or direction, which, this Hon''ble court may deem fit and proper in the facts and circumstances of the case.

(iii) Award cost of the petition to the petitioner."

The petitioner claims to be a manufacturer of '' air-conditioners, airconditioner kits, water coolers, water cooler kits and geysers in its factory situated at 149, Delhi Road, Meerut, A search operation was undertaken by the Central excise authority on 21-8-2000, when certain documents were seized from the petitioner''s premises. Search operation was under taken against some other manufactures also, namely, Navin Electricals, Monica Service Centre, Besco Electricals, Besco Refrigeration and Naveen Refrigeration. We are only concerned in the present writ petition with M/s. Birla Aircon. Adjudication proceedings were taken by the Central excise authorities and the matter went up to the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal, vide order dated 12-4-2002, remanded the matter to the adjudicating authority for fresh consideration with a direction to make available the non-relied upon documents and also the copies of the relied upon documents from serial Nos. 52 to 57 to the petitioner. On the allegation that the Central excise authorities were not complying with the order passed by the Tribunal, the petitioner approached this court by filing Civil Miscellaneous Writ Petit-on No. 847 of 2003, which was disposed of vide judgment and order dated 31-7-2003, on the assurance given by Sri Anoop Kumar Srivastava, learned standing counsel appearing for the Union of India, that the order shall be complied with within 15 days if the same had not already been complied with. Thereafter adjudication proceedings again started and the Commissioner, Custom and Central Excise, Meerut, vide order dated 27-7-2004, had confirmed the various demands of duties and penalties. It may be mentioned here that the Assistant Commissioner of Income Tax, Circle 1, Meerut vide order dated 29-3-2004, had passed an assessment order for the assessment year 2001-02. The petitioner has already preferred an appeal against the said order passed under the Income Tax Act, which is pending before the Commissioner of Income tax (Appeals), Meerut. The orders dated 27-7-2004, passed by the Commissioner of Customs and Central Excise, and the order dated 29-3-2004, passed by the Assistant Commissioner of Income Tax are under challenge in the present writ petition.

We have heard Sri Rakesh Ranjan Agrawal, learned counsel for the petitioner, Sri Ramendra Pratap Singh has filed his appearance on behalf of respondent No. 1 and Sri A. N. Mahajan, learned standing counsel appearing for respondent No. 2.

Learned counsel for'' the petitioner submitted that the Commissioner of Customs and Central Excise, Meerut., had not returned the non-relied upon documents and had not provided copies of the relied upon documents in full and, therefore, the order passed by the Commissioner, Customs and Central Excise is against the principles of natural justice. He submitted that if the order has been passed against the principles of natural justice, a writ petition is maintainable. In support thereof, he has relied upon the following decisions : -

(i) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ;and

(ii) Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others,

He further submitted that without giving copies of the relied upon documents if the order has been passed, the same is also in violation of the principles of natural justice and is liable to be set aside. For this proposition, he has relied upon a decision of the Hon''ble Supreme Court in the case of State of Kerala v. K.

T. Shaduli Yusuff (1977) 39 STC 478; (1977) UPTC 363 (SC).

From a perusal of the order passed by the Commissioner, Custom and Central Excise, we find that he had recorded a finding that the non relied upon documents have been returned and copies of the relied upon documents from serial Nos. 52 to 57 as per direction of the Tribunal have been made available to the petitioner. He has further recorded a finding that the petitioner''s counsel Sri H. K. Jain had declined to receive some of the documents for which a detailed chart has been given in the order itself. Learned counsel for the petitioner submitted that counsel, Sri H. K. Jain, had never refused to receive any document and, in fact, vide letter dated 29-10-2004, he had specifically stated that he is prepared to receive the copies of all the documents.

Be that as it may, we find that there is a dispute between the parties that the copies of the documents relied upon have not been made available to the petitioner. On the one hand, the petitioner is claiming that all the copies have not been given, whereas, on the other hand, the department is saying that the copies of the documents have been made available but the petitioner has refused to receive the same. We are not in a position to go into that question in the present proceedings under article 226 of the Constitution of India as we find that the controversy involves disputed questions of fact which can more appropriately be gone into by the authorities constituted under the statute, i.e., the appellate authority.

It may be observed here that where the order of the adjudicating authority mentions that the copies have been made available and it has not been received by the petitioner, there cannot be any violation of the principles of natural justice. Whether or not the petitioner has received or has declined to receive the same, is a question of fact. In this view of the matter, we are of the opinion that the decisions relied upon by learned counsel for the petitioner are not applicable in the present case. So far as the assessment order dated 29-3-2004, passed by the Assistant Commissioner of Income Tax, Circle 1, Meerut, is concerned admittedly, the petitioner is pursuing the alternative remedy available to it in the appeal before the Commissioner (Appeals) and therefore, the petitioner cannot be permitted to pursue two simultaneous remedy.

In view of the foregoing discussion, we decline to entertain the present writ petition under article 226 of the Constitution of India and instead relegate the petitioner to file an appeal before the Tribunal leaving it open to the petitioner to make an application to the Tribunal for giving copies of the documents of relied upon documents which, as per allegation, it has of received so far in terms of the earlier order of the Tribunal dated 12-4-2002, and if such an application is made, the Tribunal shall ensure that its earlier order is complied with in letter and spirit. It will also be open to the petitioner to make a proper application before the Commissioner (Appeals) before whom the appeal against the assessment is pending, for doing the needful.

In view of the foregoing discussion, the writ petition is dismissed on the ground of alternative remedy.

