
(2012) 11 BOM CK 0141
In the Bombay High Court
Case No : Writ Petition No. 10327 of 2012

DBOI Global Service Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Citation : (2013) 29 STR 117 : (2013) 38 STT 593 : (2013) 57 VST 424

Hon'ble Judges : M.S. Sanklecha, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Prakash Shah with Prasad Paranjpe and Jas Sanghavi, instructed by PDS Legal, for the Appellant; Vijay Kantharia with N.V. Kalantri, for the Respondent

Final Decision : Allowed

Judgement

J.P. Devadhar, J.—Heard. Rule, returnable forthwith. By consent, the petition is taken up for final hearing. This writ petition is filed to challenge the order-in-original dated 12th September, 2012 whereby the refund claim of the petitioner for the period from April, 2011 to June, 2011 has been rejected.

2. The grievance of the petitioner is that in the impugned order dated 12th September, 2012 even after recording the submission of the petitioner that various similar refund claims filed by the petitioner for the period from June, 2009 to March, 2010 have been allowed by the A.O. and even the Commissioner (Appeals) has held to the effect that the petitioner is eligible to avail the Cenvat credit and entitled to claim refund of tax paid on the services enlisted therein, the A.O. has failed to record any reasons as to why he differs with the aforesaid decision of the A.O./Commissioner (A) and, therefore, the impugned order is liable to be quashed and set aside.

3. On behalf of the revenue, it is contended that firstly, in view of the alternate remedy of appeal being available, the Writ Petition ought not to be entertained. Secondly, it is contended that in spite of several opportunities given to produce

additional documents, the petitioner has failed to produce those documents and, therefore, the assessing officer was justified in passing the impugned order. Thirdly, it is contended in para 22 of the order-in-original ("OIO") the A.O., after noticing the discrepancy in the C.A. certificate and the documents furnished by the petitioner has recorded a finding that the certificate issued by the Chartered Accountant in connivance with the petitioner cannot be accepted and hence the claim of the petitioner is liable to be rejected.

4. This Court in the case of *BNP Paribas India Solution Pvt. Ltd. v. Union of India and Anr.* [Writ Petition No. 9857 of 2012] decided on 18th October, 2012 while observing that ordinarily writ petition is not entertained against an order-in-original passed by the A.O., has held that if the A.O. fails to record the reasons for disagreeing with the decision of the A.O. for the past period, then, to prevent the miscarriage of justice, the writ petition can be entertained.

5. In the present case, the A.O. in the impugned order has noted the argument of the petitioner that similar claims of the petitioner have been allowed in the past by the A.O. as also the Commissioner (A), but does not give a single reason to why he disagrees with the earlier decisions of the A.O. and the Commissioner (A). According to the A.O., in spite of repeated adjournments, the petitioner has failed to furnish the additional information called for by the A.O. Assuming that the petitioner has failed to furnish additional information, it was obligatory on the part of the A.O. to record a finding as to why the documents furnished by the petitioner are not sufficient to allow the claim of the petitioner and why additional documents are necessary, especially when on the basis of similar documents furnished by the petitioner in the past, the claims have been allowed by the A.O. as also the Commissioner (A).

6. Apart from the above, in view of discrepancy in the amount certified by the C.A. and the documents furnished by the petitioner, the A.O. has drawn adverse inference to the effect that the certificate issued by the C.A. is in connivance with the petitioner and is false. It is a matter of record that the petitioner has explained the above discrepancy by filing reconciliation statements before the A.O. much prior to the passing of the impugned order-in-original by the A.O. In spite of the specific explanation given by the assessee, the impugned order has been passed without considering the reconciliation statement submitted by the petitioner.

7. The above conduct of the A.O. in arriving at a conclusion that the certificate issued by the C.A. is false, without considering the explanation given by the petitioner and without assigning any reasons, clearly shows that the A.O. is biased against the petitioner and bent upon rejecting the claim of the petitioner without even considering the merits of the claim put forth by the petitioner. Moreover, the conduct of the A.O. in seeking to justify his order even after it is brought to the notice of the counsel that unless there are compelling reasons, the A.O. cannot disagree with the order of the Commissioner (A) clearly shows that the A.O. has totally biased and prejudiced mind in the matter. It is well

established in law that no one can act in judicial capacity if his conduct gives ground for believing that he cannot act with an open mind or impartially. In the present case, we have a reasonable apprehension that the A.O. who has passed the impugned order does not have open mind and, therefore, cannot pass order impartially.

8. In these circumstances, we set aside the order-in-original dated 12th September, 2012 and remand the matter back for fresh decision on merits and in accordance with law. Since the Deputy Commissioner of Service Tax, who has passed the impugned order has a prejudiced and biased mind in the matter, we direct the Commissioner of Service Tax, Mumbai-II to allot the present matter to another competent officer other than the officer who has passed the impugned order so that fresh order is passed on merits and in accordance with law. Rule is made absolute in the above terms with no order as to costs.