(2015) 06 KAR CK 0054

In the Karnataka High Court

Case No : W.P. No. 23627 of 2015 (T-RES)

Dhariwal Industries Ltd. APPELLANT

Vs

Commr. of C. Ex., Cus. & S.T., Bangalore-III RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 9D

Citation : (2015) 325 ELT 532

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Hari Radhakrishnan and B. Venugopal, Advocates, for the Appellant; Y. Hariprasad, C.G.S.C., for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioner is aggrieved by the correspondence dated 3-6-2015 of the Superintendent of Central Excise (Adjn.) Headquarters Office, Bangalore-III, Annexure-F, denying the right to cross-examine one Manoj Mitulal, another Sohanraj Mehta, Srinivasan, Accountant of Champion Packaging and a host of officers who are said to have allegedly conducted surveillance of the petitioner-factory. According to the petitioner the investigating authorities under the Central Excise Act, 1944 caused a raid on the house of one Manoj Mitulal and recovered certain loose sheets belonging to one Sohanraj Mehta while no statements were recorded of Manoj Mitulal. It is the assertion of the petitioner that this Manoj Mitulal should have been tendered for cross-examination by the petitioner since the case depends upon the interpretation of the loose sheets and version of Sohanraj Mehta. That contention must necessarily stand rejected, since, admittedly Manoj Mitulal neither made a statement nor was a witness for the Revenue.

2. The other person known as Sohanraj Mehta, it is said, addressed a letter dated 21-10-2009 implicating the petitioner, which letter is not retracted. The Revenue having based its claim or laid a foundation on that statement, hence petitioner was entitled to cross-examine that person. In addition it is stated that

even according to the Revenue, as disclosed in the show cause notice, Sohanraj Mehta is said to have made several statements in the course of an enquiry which are relied upon by the Revenue to establish the case against the petitioner.

These facts are not disputed by the learned counsel for the Revenue.

3. Although learned counsel for the Revenue draws the attention of the Court to clause (b) of sub-section (1) of Section 9D of the Central Excise Act, 1944 to submit that the statements made by Sohanraj Mehta on several occasions in an enquiry must be admitted in evidence, the said submission in my opinion is a specious plea.

4. It is not the case of the Revenue that Sohanraj Mehta who made the statements in the enquiry is examined as a witness in the case before the Court and that the Court was of the opinion that having regard to the circumstances of the case his submission should be admitted in evidence, in the interest of justice. The word ''Court'' in the aforesaid statutory provision should be read as a Court where a witness is examined and not a statement recorded in an enquiry. Therefore, it is too farfetched for the Revenue to contend that the statements made by Sohanraj Mehta in the course of the investigation would tantamounts to statements made in a Court. Be that as it may, if Sohanraj Mehta is examined as a witness for the Revenue, it is needless to state that the said witness should be tendered for cross-examination by the petitioner.

5. Much is made over Sohanraj Mehta not retracting from the letter and therefore, whatever is written by Sohanraj Mehta is gospel truth and must be accepted as a matter of fact. This submission too is unacceptable. Merely because Sohanraj Mehta allegedly implicated the petitioner by making a statement in writing does not necessarily mean that proof of implication of the petitioner, in the transaction. It is for the Revenue to establish such implication if at any time Sohanraj Mehta is examined as a witness for the Revenue to prove the implication of the petitioner, it is needless to state that he ought to be tendered for cross-examination by the petitioner.

6. It is in the further submission that one Srinivasan, Accountant of Champion Packaging, is a witness to be examined by the petitioner. If that is so, if there is no embargo in law, it is open for the petitioner to make necessary application for issue of summons, so as to examine him as a witness for the petitioner.

7. If officers of the Central Excise allegedly conducted surveillance of the factory premises of the petitioner, it is for the petitioner to prove that fact of surveillance by examining the officers and therefore, the question of securing those officers for cross-examination by the petitioner, as requested in its letter dated 31-3-2015 Annexure-E does not arise.

8. In the correspondence Annexure-F a specific statement is made which reads thus:--

"no statements have been recorded from the persons who have been asked for cross-examination by the assessee and also they were not shown as witness in this case".

In this view of the matter there is no justification, in law, for the petitioner to seek a direction to the Revenue to tender/or cross-examination the persons who have not been examined in the case.

Petition in the circumstances is without merit and is accordingly dismissed, subject to the observations noticed.

