(2014) 04 KAR CK 0185

In the Karnataka High Court

Case No : W.P. No. 104401/2014 (T-TAR)

Dhruvdesh Metasteel Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2014) 04 KAR CK 0185

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Pramod S. Katavi, Advocate for the Appellant

Judgement

Aravind Kumar, J.—Heard Sri. Pramod S. Katavi, learned counsel appearing for the petitioner.

2. Show cause notice dated 14.08.2013 issued to the petitioner by 2nd respondent calling upon petitioner to show cause for Evasion of Customs duty by wrongly classifying coal imported as ''Steam Coal'' under CTH 2701 1920 though it was required to be classified as ''Bituminous Coal'' under CTH 2701 1200 and as to why differential customs duty of Rs. 47,14,640/- with interest and penalty should not be recovered has been questioned in this writ petition.

3. Grievance of the petitioner is though certain documents were requested to be furnished by 2nd respondent to enable the petitioner to file a detailed reply to the show cause notice same was not furnished. It is contended though request was made in this regard on 25.09.2013 Annexure-H to 2nd respondent same was not furnished. It is contended that outcome report of investigation conducted by DRI Ahmedabad Zonal Unit was sought for since same had been referred to in the SCN in question which was required by the petitioner to submit reply to the said show cause notice and on account of non furnishing of the same, present writ petition is filed.

4. At the outset, it requires to be noticed that document sought for by the petitioner under the representation dated 25.09.2013 Annexure-H which is

referred to in the show cause notice at paragraph 6.4 relates to a investigation conducted by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit in similar cases who had requested and obtained clarifications from the Joint Director, Customs laboratory, Jawaharlal Nehru Custom House, Navasheva, Raigarh about the applicability of the formula referred to in the said report is undisputedly available in the website of "U.S. Department of Energy, Energy Information, Administration" and said Formula has been applied to the petitioners case to deny the petitioner to exemption sought for.

5. When the authority issuing the show cause notice has relied upon the said Formula, which is also extracted in paragraphs 6.3 and 6.5 of SCN, I am of the considered view that prayer sought for by the petitioner in its representation dated 25.09.2013 Annexure-H recedes to background and it does have any bearing on the reply to be submitted by the petitioner. Even otherwise for raising demand on the petitioner respondent authorities have relied upon formula which it extracted in the show-cause notice itself and as such petitioner can reply to the said SCN by raising all contentions including non applicability of said Formula. It is also not in dispute that all other details sought for by the petitioner has been received by it already and the documents relied upon in the SCN by 2nd respondent is appended to the SCN as per Annexure-A. Hence, it is open to the petitioner to reply to the said show cause notice if not already replied and no opinion is expressed on the contentions raised in this writ petition. All contentions are left open.

6. Even otherwise, time and again, Hon''ble Supreme Court has categorically held when SCN is issued, interference under Article 226 should not be there. In the case of Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, it has been held as under:

10. We are concerned in this case, with the entertainment of the writ petition against a show-cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said Ext. P4 notice is ex facie a ''nullity'' or totally "without jurisdiction" in the traditional sense of that expression-that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking'' the jurisdiction under Article 226 of the Constitution of India.

(Emphasis supplied by me)

7. In the instant case there is neither vires of any statutory provision nor notification and circular is under challenge. Petitioner is also not questioning the authority of respondent to issue SCN. Hence, no interference can be made by this Court under Article 226 of Constitution of India. Hence, Writ petition is hereby dismissed. Petitioner is at liberty to file reply to the show cause notice. Respondent-authority shall permit the petitioner to file Reply to the show cause notice not later than 21.04.2014 and also afford him personal hearing in the matter is sought for.

Ordered accordingly.

