
(2014) 02 BOM CK 0323
In the Bombay High Court
Case No : Writ Petition No. 12124 of 2013

EMCO Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A(2) — Constitution of India, 1950 - Article 226

Citation : (2015) 319 ELT 28

Hon'ble Judges : M.S. Shah, C.J.; M.S. Sanklecha, J.

Bench : Division Bench

Advocate : Prakash Shah and Jas Singhavi i/by PDS Legal, for the Appellant; Y.S. Bhate and Suchitra Kamble, for the Respondent

Judgement

1. Rule Returnable forthwith. By consent of counsel, the petition is taken up for final disposal. By this petition under Article 226 of the Constitution, the Petitioner has challenged the order dated 31 July, 2013 passed by the Additional Commissioner of Central Excise. By the impugned order dated 31 July, 2013, a demand of duty of Rs. 4,09,455/- has been confirmed under Section 11A(2) of the Central Excise Act, 1944 ("Act") and an equivalent penalty has also been imposed under Section 173Q(bb) of the Central Excise Rules, 1944 ("Rules").

2. The grievance of the Petitioner is that the impugned order was passed almost nine months after the conclusion of the hearing. This delay in passing the impugned order, the Petitioner submits, has led to serious prejudice to it. This is so as the impugned order does not discuss and/or consider the various submissions made by the Petitioner during the hearing leading to a demand which itself is not sustainable. Our attention was particularly drawn to an application for additional grounds made before the Tribunal on 18 January, 2010, which was a part of the proceedings before the Adjudicating Authority. In this application, evidence is annexed of the fact that goods sent to job workers were received back within 180 days. However, the same was not taken into account

while confirming the notice and imposing the penalty. The Petitioner submits that the Central Board of Excise and Customs has itself issued circular dated 5 August, 2003 directing the authorities under the Act to issue orders expeditiously after conclusion of hearing and not beyond a period of fifteen days. He also places reliance on the decision of this Court in *Shivsagar Veg. Restaurant Vs. Asstt. Commissioner of Income Tax, 24(2) and Another*, and the decision of Apex Court in the matter of *Anil Rai Vs. State of Bihar*, . In the above view, the learned counsel for the Petitioner states that the impugned order dated 31 July, 2013 be set aside and the Adjudicating Authority be directed to pass a fresh order after giving a personal hearing to the Petitioner.

3. As against this, the learned counsel for Revenue submits that the impugned order dated 31 July, 2013 is well considered order and no prejudice has been caused to the Petitioner on account of delay in passing the impugned order by the Adjudicating Authority. Besides, it is submitted that the Petitioner has a remedy of preferring an appeal under the Act against the impugned order. Therefore, the petition be dismissed.

4. We have heard the learned counsel for the parties. In the present case, the personal hearing was concluded on 17 September, 2012 and the written submissions were filed by, the Petitioner on 24 September, 2012. The impugned order was passed on 31 July, 2013 i.e. almost nine months after the hearing. This delay has resulted in the Petitioner's submissions of goods being returned within 180 days not being considered. This evidence was sought to be brought on record before the Tribunal but not allowed. However, this Court by its order dated 14 September, 2010, while remanding the matter to the Adjudicating Authority, had left all issues open. Therefore, the above evidence, which was available before the Adjudicating Authority and also relied upon by the Petitioner at the time of hearing, was not considered in the impugned order, then the same can only be attributed to the delay in passing the order. This delay does appear to have caused prejudice to the Petitioner. This Court in the matter of *Shivsagar Veg. Restaurant (supra)* has, after considering the various decisions of the Apex Court, laid down that undue delay (four months) in delivery of judgment by the ITAT after the hearing is in itself sufficient to set aside the impugned order without considering the merits of the order. The Apex Court in the matter of *Anil Rai (supra)* has reiterated the observations made by an earlier Bench of Apex Court in *R.C. Sharma Vs. Union of India (UOI) and Others*, , which reads as under:

"...Nevertheless an unreasonable delay between hearing of arguments and delivery of judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be, shaken if there is excessive delay between hearing of arguments and

delivery of judgments."

(emphasis supplied)

5. In view of the above, it is very clear that the authorities under the Act are obliged to dispose of proceedings before them as expeditiously as possible after the conclusion of the hearing. This alone would ensure that all the submissions made by a party are considered in the order passed and ensure that the litigant also has a satisfaction of noting that all his submissions have been considered and an appropriate order has been passed. It is most important that the litigant must have complete confidence in the process of litigation and that this confidence would be shaken if there is excessive delay between the conclusion of the hearing and delivery of judgment.

6. Therefore, in this case, we find that the delay by the Adjudicating Authority in rendering its order nine months after the conclusion of the hearing has caused prejudice to the Petitioner as it has not considered the evidence produced in respect of return of goods within 180 days.

7. We have not relegated the Petitioner to the alternate remedy of filing an appeal under the Act, as we find that the impugned order is against the parameters laid down by this Court in Shivsagar Veg. Restaurant (supra).

8. In the aforesaid circumstances, we set aside the impugned order dated 31 July, 2013 and direct the Additional Commissioner of Central Excise and Customs to pass a fresh order after granting the Petitioner an opportunity of personal hearing. Needless to add that the resultant adjudication order would be passed within reasonable time after the conclusion of the hearing granted to the Petitioner. Petition is allow in the above terms. No order as to costs.