
(2008) 10 P&H CK 0049
In the Punjab And Haryana At Chandigarh

Fashion Fair

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (2009) 236 ELT 19 : (2009) 13 STR 496 : (2009) 21 STT 41

Hon'ble Judges : L.N. Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—In this petition, the petitioner seeks quashing of order dated 30-5-2008 (Annexure P-4) passed by the Commissioner of Customs and Central Excise (Appeals) exercising the powers of Appellate Authority u/s 35F of the Central Excise Act, 1944.

2. Case of the petitioner is that show cause notice for levying of service tax was issued to the petitioner, which the petitioner contested. The adjudicating Authority raised a demand and also imposed penalty against which the petitioner filed an appeal along with an application for stay Respondent No. 3 without giving an opportunity of hearing to the petitioner rejected the application of stay and directed the respondents to deposit Rs. 2,50,000/- as condition of pre-deposit towards penalty and full amount of service tax as a condition for hearing the appeal.

3. We have heard learned Counsel for the parties and perused the records.

4. Learned Counsel for the petitioner submits that while deciding the stay application, Commissioner (Appeals) respondent No. 3 exercised powers of quasi judicial authority and was required to give an opportunity of hearing to the petitioner. In any case, the order must show application of mind with regard to the issue of prima facie case, balance of convenience and irreparable loss. Learned Counsel relies on, a judgment of this Court in Adinath Dyeing and Finishing Mills Vs. Commr. of C. Ex., wherein it was observed:

In these petitions we are not concerned with the merits of the controversy raised in the appeals. The short question is whether the Tribunal has exercised the discretion vested in it under the afore-mentioned proviso on sound legal principles considering all the relevant facts. True that at the time of consideration of application seeking waiving/stay. It is not desirable for the Tribunal to embark upon a detailed inquiry to find out whether the stand of the applicants is on terra firma yet it is imperative that before making any direction with regard to the pre-deposit, the Tribunal must take into consideration the relevant factors, normally, whether there is a prima facie case in favour of the assessee; the balance of convenience qua depositor or otherwise; irreparable loss, if any, likely to be caused in case the stay is not granted and safeguarding the public interest. The order of the Tribunal must reflect its application of mind on these factors. We feel that in the present cases, there has been non-application of mind in respect of each of the cases individually, thus, vitiating the pre-deposit orders.

5. Reliance has also been placed on the judgment of Hon"ble Supreme Court in Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, wherein it was held that unless principles of natural justice are excluded, opportunity of hearing has to be provided when the order visits a person with civil consequence.

6. It was also pointed out that respondent No. 3 has issued notices in several cases to give opportunity of hearing whenever he so desires. Whenever he does not so desire, the opportunity is not given. Reference has been made to the notices filed as Annexure P-6 collectively.

7. Learned Counsel for the respondents submits that opportunity of hearing is not always necessary for deciding the appeal.

8. We are conscious of the proposition that applicability of principles of natural justice does not always require personal hearing at appellate stage. Reference may be made to Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), , Union of India (UOI) Vs. Jyoti Prakash Mitter, , Union of India (UOI) Vs. G.R. Prabhavalkar and Others, and State Bank of Patiala v. Mahendra Kumar Singhal, 1994 Supl. (2) SCC 463 .

9. In the Scheme of a taxing statute, unless expressly or by necessary implication excluded, personal hearing is desirable at the appellate stage, though effect of denial of opportunity differs from case to case.

10. Learned Counsel for the respondent also pointed that in the application filed by the petitioner, hardship has not been pleaded beyond saying that deposit will result in undue hardship. In the said application, the petitioner has raised argument with regard to validity of levy of tax.

11. Without expressing any opinion on merits, we are of the opinion that respondent No. 2 must grant personal hearing to the petitioner before deciding the issue in question.

12. Accordingly, we allow this petition and quash the impugned order Annexure P-4 with liberty to respondent No. 3 to pass a fresh order after granting opportunity of hearing to the petitioner.

13. Petitioner is directed to appear respondent No. 3 for personal hearing on November 15, 2008.

The petition is disposed of.