(2014) 09 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition Nos. 8309 and 8323 of 2014

General Mills India (P.) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 322 ELT 95 : (2014) 48 GST 311

Hon'ble Judges : S.C. Dharmadhikari, J;A.K. Menon, J

Bench : Division Bench

Advocate : Prakash Shah, Advocate for the Appellant; Vijay Kantharia and Anamika Malhotra, Advocate for the Respondent

Judgement

1. The Petitioners'' applications for refund have been disposed of without hearing them and that is why these Petitions under Article 226 of the Constitution of India have been filed challenging the impugned order dated 25th July, 2014. We have heard Mr. Shah appearing for the Petitioners and Mr. Kantharia appearing for the Respondents. The claims/applications for refund of CENVAT credit and for the period specified therein have indeed been decided without the Petitioners being given a personal hearing. In the facts and circumstances of the case and without deciding any larger issue we are of the opinion that the approach of the authorities in dealing with claims/applications and passing the final orders thereon but without affording an opportunity of being heard to the Petitioners has caused serious prejudice. We have perused that part of the order passed by the authority wherein he was aware that the principles of natural justice are attracted to even such matters. However, he dispensed with the requirement in that behalf because in his opinion the law imposes a time limit for processing the refund claim. Therefore, granting a personal hearing would delay the proceedings and that is why the same was dispensed with. He has referred to several orders and judgments of the Courts of law.

2. However, there is substance in the grievance of Mr. Shah that such blanket

view taken in the impugned order would be followed in all future cases. Even if there is partial or marginal benefit granted under such order that would not be sufficient inasmuch as dispensing with the above requirements and which is fundamental and basic to any adjudication should not become a general rule. On earlier occasions the Deputy Commissioner of Service Tax, Division-VI, Mumbai-II and who has passed the impugned order Mr. S.P. Pradhan has been pulled up by this Court. He had not implemented and carried out the orders and directions of this Court which were specific and clear. We do not see how the approach of the officer in this case can be countenanced even in the present matter. When he is aware of the requirement of giving a personal hearing before a adverse order is passed, then, the impugned order shows either a uncalled for or undue enthusiasm which could safely be termed as arrogance as well. We do not approve of such a hasty course and, therefore, proceed to quash and set aside the impugned order. The refund claim of the Petitioners shall be now decided in accordance with law meaning thereby after hearing the Petitioners and giving them an opportunity of producing the relevant material and a reasoned order shall thereafter be passed by the authority and uninfluenced by the earlier action. All contentions on merits of the claim of refund are kept open. The Petitions are allowed. No costs. Our order and directions does not mean that we have adjudicated the claim of refund and that the authorities are oblige to grant it.

