
(2015) 06 JH CK 0011
In the Jharkhand High Court
Case No : W.P. (T) No. 2183 of 2015

Jagannath Cement Works Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Citation : (2015) 325 ELT 497

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Pankaj Bhatia, Advocate, for the Appellant; Deepak Roshan, for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—This writ application has been preferred challenging the ex parte Order dated 9th February, 2015, passed in Original No. 13-14/Commr/2015 by the Commissioner of Central Excise, Jamshedpur, which is Annexure 6 to the memo of the petition, whereby, liability has been imposed upon this petitioner for central excise duty of Rs. 5,77,77,420/-, which includes basic Excise duty, Education Cess, Surcharge and Higher Education Cess. The penalty of equal amount has also been imposed. The impugned ex parte order has been passed allegedly without giving adequate opportunity of hearing and therefore, this writ petition has been preferred.

Submissions made on behalf of the petitioner.

Counsel for the petitioner has argued out the case at length and submitted that the detailed argument made by him has already been incorporated by this court in the order dated 20th May, 2015 in this writ petition. It has further been submitted that show cause notice was issued by the Respondent Department in the month of August, 2014 and reply to that show cause was given on 13th October, 2014, in which it was specifically stated that the petitioners have received the notice for hearing dated 20th October, 2014 and it was requested that the matter be adjourned to some other date after 14th November, 2014.

Thereafter, vide notice dated 21st October, 2014 respondent fixed hearing of the adjudication on 11th November, 2014. On the said date, counsel for the petitioner presented himself in the office of the respondent, but, the Commissioner of Central Excise, Jamshedpur was not available and therefore, this petitioner gave application praying therein that since the Commissioner is not available, the next date of hearing may be fixed in the month of December, 2014. Surprisingly, instead of the next date of hearing being fixed, the petitioner was served with an ex parte order dated 9th February, 2015 passed without giving any adequate opportunity of being heard to the petitioner. Therefore, the order dated 9th February, 2015, passed by the Commissioner, Central Excise, Jamshedpur, which is Annexure 6 to memo of the writ petition, may be quashed and set aside and the matter may be remanded to the Commissioner, Central Excise, Jamshedpur for a fresh decision. The decision may be taken by the Commissioner on the merit of the matter and on the basis of the evidence and without being influenced by the impugned order dated 9th February, 2015. The petitioner will not ask for any unnecessary adjournment.

Submissions made on behalf of the respondent.

2. Counsel for the respondent submitted that they have filed a detailed counter affidavit, in paragraph No. 11 of which it has been stated that this petitioner has already been given opportunity of being heard on 18th September, 2014 and 20th October, 2014 before adjournment was again sought for by the petitioner on 11th November, 2014, but, the petitioner avoided the same and adopted delaying tactics during the adjudicating proceedings and therefore, instead of the adjournment sought for by this petitioner on 11th November, 2014, straight away impugned order dated 9th February, 2015 was passed by the Commissioner, Central Excise, Jamshedpur. Previously this petitioner has sought for adjournments and twice adjournments were allowed and therefore, Commissioner Central Excise, Jamshedpur has passed the impugned order without waiting for the petitioner and as adequate opportunity was already given, the Commissioner, Central Excise, Jamshedpur thought it fit not to give the petitioner any hearing before passing the impugned order, hence, this writ petition may not be entertained by this court.

Reasons:

3. Having heard counsel for both sides and looking to the impugned order passed by the Commissioner, Central Excise, Jamshedpur dated 9th February, 2015, we, hereby, quash and set aside the order dated 9th February, 2015, passed by the Commissioner, Central Excise, Jamshedpur, mainly for the following reasons:

(I) Two show cause notices were given by the respondents to this petitioner for two different periods and they were replied to by this petitioner in the month of October, 2014. Thereafter, the date of hearing was fixed by the Commissioner, Central Excise, Jamshedpur, but Commissioner, Central Excise, Jamshedpur, could not remain present because of some engagement on the said date of

hearing, i.e. on 11th November, 2014 and therefore, on that date petitioner filed an application praying for next date of hearing to be fixed in the month of December, 2014. It appears that instead of giving next date of hearing, impugned order has been passed by the Commissioner, Central Excise, Jamshedpur on 9th February, 2015. This is not permissible in the eye of law. When the Commissioner, Central Excise, Jamshedpur was not present on 11th, 2014, while the petitioner was present, next date of hearing ought to have been fixed.

(II) Even otherwise also, when complex issues are involved in a matter, the authority should be slow enough to decide the issues with the help of the assessee upon whom the Notices were issued. As we are remanding the matter, we are not going into fine niceties of the assessment of the excise duty, which is calculated at Rs. 5,77,77,420/- and the equal amount of penalty, which has also been imposed. The calculation is based upon consumption of electricity and therefore, such a matter should not have been decided by the Commissioner, Central Excise, Jamshedpur ex parte and no party should be allowed to suffer due to absenteeism of the lawyer.

As a cumulative effect of the aforesaid facts and reasons, we therefore, set aside the impugned order dated 9th February, 2015 and we, hereby, remand the matter to the Commissioner, Central Excise, Jamshedpur for a fresh decision. This petitioner shall remain present before the Commissioner, Central Excise, Jamshedpur on 21st August, 2015 between 11 a.m. to 12 noon. The Commissioner, Central Excise, Jamshedpur, thereafter, will give his suitable date for hearing or he may hear the matter on the very same day. No unnecessary adjournments shall be sought for by this petitioner before the Commissioner, Central Excise, Jamshedpur and he shall cooperate during the hearing. Commissioner shall decide the show cause notices in the light of the evidences on record and without being influenced by the order dated 9th February, which is annexed as Annexure 6 to the writ petition.