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(2007) 04 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 2538 of 2007

Jindal Drugs Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 27-04-2007

Acts Referred:

Central Excise Rules, 2002 — Rule 18
Motor Vehicles Act, 1988 — Section 68

Citation : (2009) 16 STR 114

Hon'ble Judges : V.C. Daga, J;S. Radhakrishnan, J

Bench : Division Bench

Advocate : R.A. Dada and Prakash Shah, instructed by P.D.S. Legal, for the Appellant; R.V. Desai A.S. Rao, Y.S. Bhate and Heena Shah, for the Respondent

Judgement

S. Radhakrishnan, J.—By this Petition, the Petitioner is challenging the Order-in-Original dated 3rd April, 2007 passed by Respondent No. 3 rejecting the rebate claims filed by the Petitioner and adjudicating the same.

2. The brief facts are, that the Petitioner is a company which manufactures "Mentha Oil". The Petitioner claims that it had sent the said Mentha Oil to Tien Yuan India Private Limited after paying the requisite duty. The Tien Yuan India Private Limited manufactures "Menthol" out of the Mentha Oil and the same is exported. The said Tien Yuan India Private Limited had given disclaimer in favour of the Petitioner to enable the Petitioner to claim back the rebate of the excise duty paid by the said Tien Yuan India Private Limited on each removal of Menthol for export made on behalf of the Petitioner.

3. The Assistant Commissioner of Central Excise and Customs have been granting the requisite rebate of the excise duty paid on the goods exported by the Tien Yuan India Private Limited on behalf of the Petitioner based on the disclaimer letter given by the Petitioner in favour of Tien Yuan India Private Limited.

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4. The Petitioner contended that from time to time diverse consignments were exported from April, 2006 to November, 2006 and as such, the Petitioner made various claims for rebate for the Central Excise Duty already paid and the same totals to Rs. 17,15,49,141/-. The Petitioner contended that it had exported the final product, which are duly manufactured by Tien Yuan India Private Limited and it is the contention that the Petitioner is entitled to the rebate of the hole duty excess paid under the final payment exported out side the country, as per Rule 18 of the Central Excise Rules, 2002.

5. The Petitioner was pursuing Respondent No. 3 with regard to the aforesaid rebate claims totalling to Rs. 17,15,49,141/-. In that behalf, the Petitioner has filed a Writ Petition No. 7838 of 2006 seeking a mandatory relief directing the Respondents to sanction the aforesaid rebate claim. In the said Writ Petition one Mr. Padmanabhan Ravikumar Nair, the Assistant Commissioner of Central Excise, Raigad Commissionerate, had filed at least four affidavits strongly contending that the Petitioner is not entitled to any rebate. In the said Petition, after hearing the parties for some time, it appears that the Court permitted the Petitioner to withdraw the above Petition, in view of the statement made by the learned Counsel for the Respondents, that all the refund claims filed by the Petitioner for the period April, 2006 to November, 2006 will be decided within a period of six weeks from the date of the said order.

6. In pursuance of the aforesaid order dated 23rd February, 2007, the Maritime Commissioner of Central Excise had issued a show cause notice on 13th March, 2007 to show cause as to why the refund claims of the Petitioner should not be rejected on the grounds set out therein. In the said show cause notice it was mentioned that the personal hearing will be granted oh 28th, 29th and 30th March, 2007. The Petitioner through their Advocate had filed a reply on 22nd March, 2007. On 29th March, 2007 the Petitioner had attended the office of the Maritime Commissioner of Central Excise. The Petitioner was informed that the personal hearing will be given by Mr. Padmanabhan Ravikumar Nair. The Petitioner, therefore appeared before Mr. Padmanabhan Ravikumar Nair and made request that he should not adjudicate the show cause notice dated 13th March, 2007, since he himself had filed four affidavits strongly contending that the Petitioner was not entitled to any rebate and the Petitioner pleaded that the personal hearing was given by Respondent No. 2 However, it appears that Mr. Padmanabhan Ravikumar Nair had refused to grant any time and insisted that the Petitioner should complete their arguments as he had to dispose of the matter within a period of six weeks, in view of this Court''s order. On the request of the Petitioner. Mr. Nair also recorded the objections of the Petitioner to appear before him and also recorded the submissions of the Petitioner on merit.

7. It is pertinent to note that suddenly on 3rd April, 2007, a corrigendum to the aforesaid show cause notice dated 13th March, 2007 was issued by Respondent No. 3 Mr. Padmanabhan Ravikumar Nair staring that the amount in the show cause notice should read as Rs. 17,15,49,141/- instead of Rs. 16,90,49,943/-.

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8. It may be also noted that between the period 26th March, 2007 to 30th March, 2007, subsequent to the personal hearing granted by Mr. Padmanabhan Ravikumar Nair, the Commissioner of Central Excise, issued a show cause notice to Tien Yuan India Private Limited calling upon them for recovery of certain excise duty, education cess etc. and also interest and proposed penalty.

9. In view of the aforesaid, the Petitioner apprehended that said Mr. Padmanabhan Ravikumar Nair will not adjudicate the rebate claims fairly and had filed a Writ Petition No. 2346 of 2007 seeking a restraint order from proceeding with show cause notice dated 13th March, 2007. It appears that said Writ Petition was served on the learned Advocate for the Respondent Mr. H.P. Chaturvedi on 3rd April, 2007. When the Petition came up for admission on 4th April, 2007 before this Court, the matter was adjourned to 11th April, 2007 on the request of the learned Counsel for the Respondents. However, in the mean while the Respondent No. 3 and his subordinates were restrained from adjudicating the said show cause notice dated 13th March, 2007.

10. However, in the mean while, it appears that Mr. Padmanabhan Ravikumar Nair Respondent No. 3 had passed the Order-in-Original dated 3rd April, 2007 which was handed over to the Postal Authority for dispatch on 5th April, 2007 and the said order was received on 9th April, 2007 by the Petitioner.

11. In the meanwhile, the Central Board of Excise and Customs had issued a clarification on 3rd April, 2007, which was beneficial to the Petitioner.

12. By the aforesaid order dated 3rd April, 2007, Mr. Padmanabhan Ravikumar Nair the Respondent No. 3 had rejected all the 191 rebate claims, which order is being challenged by this Petition mainly on the grand that ex-facie order is untenable and unsustainable in law, as the same was in gross violation of principles of natural justice.

13. The learned Senior Counsel for the Petitioner contended that the Respondent No. 3 Mr. Padmanabhan Ravikumar Nair appears to have acted with haste and in spite of repeated objections, he bent upon passing they order on 3rd April, 2007 knowing very well, that in fact there was a Petition pending seeking a restraint order against him from proceeding with the said show cause notice.

14. Mr. Dada, the learned Senior Counsel also strongly contended that the impugned order passed by Mr. Padmanabhan Ravikumar Nair Respondent No. 3 is clearly mala fide and that the apprehensions of the Petitioner had come true.

15. Mr. Dada, the learned Senior Counsel also sought to contend that even on merit, the order is not sustainable.

16. Mr. Dada, the learned Senior Counsel contended that in this case, the bias is explicit and he emphasized that the principle of bias is not only based on the principle to avoid possibility of partial decision but also to ensure public confidence in the impartiality of the administrative adjudicatory process. Mr. Dada, the learned Counsel highlighted that the basis of the principle is that

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justice should not only be done, but manifestly and undoubtedly be seen to be done. Mr. Dada, the learned Senior Counsel, in this behalf relied on a judgment of the Hon''ble Supreme Court in the case of Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors. (2001) 1 SCC 182.

17. Mr. Desai, the learned Senior Counsel for the Respondents sought to justify the order passed by Respondent No. 3 and contended that there is no bias or mala fide on the part of Mr. Padmanabhan Ravikumar Nair Respondent No. 3 herein and sought to justify the order passed by Respondent No. 3. However, the learned Senior Counsel could not controvert that Mr. Nair had filed four affidavits strongly opposing the grant of rebate claim. Mr. Desai, the learned Senior Counsel relied on G. Radhakrishnan Vs. Union of India (UOI), to justify the rejection of the claim on merit. However, we make it clear that we are not going into the merits of those rebate claims.

18. After having heard both the learned Counsel for the parties and after having perused all the affidavits in reply filed in the above, it is apparent that the Petitioner has been apprehending biased approach by Mr. Padmanabhan Ravikumar Nair the Respondent No. 3 herein mainly because Mr. Padmanabhan Ravikumar Nair had filed four affidavits very strongly contending that the Petitioner is not entitled to any rebate claim, in Writ Petition No. 7838 of 2006 over and above, as Mr. Dada, learned Senior Counsel pointed out that the act of Mr. Padmanabhan Ravikumar Nair Respondent No. 3 himself insisting on proceeding with the matter clearly shows a "reasonable likelihood of bias" and ultimately, a party should feel satisfied that he has been afforded a fair opportunity of hearing and not by a person with preconceived notions in the matter.

19. The first principle of BIAS is that the adjudicator should be disinterested and unbiased. That the prosecutor himself should not be a judge. That the judge should be a neutral and disinterested person. That a person should not be a judge on his own cause. The main basis of this principle is that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

20. Another aspect to be noted is that actual existence of bias is not necessary. The test of bias is ''real likelihood of bias.'' If a reasonable person would think on the basis of the existing circumstances, that he (i.e. adjudicator) is likely to be prejudiced, that is sufficient to quash the decision:

The Hon''ble Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , held that the hearing held u/s 68(d) of Motor Vehicles Act by the Secretary of the Transport Department was held to be vitiated because of his Department had prepared the scheme against which the hearing had taken place and "it is one of the fundamental principles of judicial procedure that the person or persons who are entrusted with the duty of hearing a case judicially should be those who have no personal bias in the matter.

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21. A renowned Scholar and jurist de Smith in his well-known "Constitutional and Administrative Law" (New Edition) page 583, observes as under:

In ninety-nine cases out of a hundred it is enough for the Court to ask itself whether a reasonable person view the facts would think there was a substantial possibility of bias.

22. In the light of the above backdrop, we are clearly of the view that in view of Mr. P.R. Nair filing four affidavits strongly opposing grant of rebate claims and his insistence to hear the above matter, clearly establishes the "real likelihood of bias." It is vital to note that on 3rd April, 2007, Mr. Nair issued a corrigendum to the show cause notice, where by the demand was increased by nearly Rs. 25 lacs. Admittedly, Mr. Nair gave no opportunity to the Petitioner to refute the same, as the impugned order itself was passed on 3rd April, 2007. Hence impugned order dated 3rd April, 2007 is totally unsustainable in law.

23. Under the aforesaid facts and circumstances of the case, we feel satisfied that the acts of Respondent No. 3 Mr. Padmanabhan Ravikumar Nair passing the said Order-in-Original dated 3rd April, 2007 is actuated with malice and the same cannot be sustained in law. Under these facts and circumstances of the case, Rule is made absolute in terms of prayer Clauses (a) and (b).

24. As a consequence of the same, we direct Respondent No. 2 to depute any other Officer other than Respondent No. 2 and Respondent No. 3 in the Petition, to adjudicate the show cause notice dated 13th March, 2007 afresh, after affording an opportunity of personal hearing to the Petitioner. The same shall be expeditiously decided. Rule is made absolute in terms of the above.

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