(2013) 11 RAJ CK 0138

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13775 of 2013

M/s. Kushi Enterprises — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0138

Hon'ble Judges : Vishnu Kumar Mathur, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Ramit Mehta and Mr. Pradhyumn Singh, for the Appellant; Sushant Daga, for the Respondent

Judgement

1. By way of this writ petition, the petitioner-assessee has questioned the legality and validity of the demand notice dated 12.09.2013 (Annex. ''F'') as issued by the Assistant Commissioner, Central Excise Division, Udaipur; and the communication dated 03/07.10.2013 (Annex. ''J'') sent by the Additional Commissioner (Recovery), Central Excise Commissionerate, Jaipur-II. By the demand notice dated 12.09.2013, the petitioner-assessee has been called upon to deposit the service tax amounting to Rs. 1,61,17,199/-together with interest and further, the penalty imposed in the sum of Rs. 1,72,17,199/- under the Order-in-Original No. 47/2012/ST/JPR-II dated 23.11.2012. Then, by the communication dated 03/07.10.2013, the representation made by the petitioner has been rejected. It is submitted that the appeal bearing No. ST/55918/2013-CU(DB) alongwith stay application No. ST/STAY/56256/2013 has been filed by the petitioner-assessee before the CESTAT on 20.02.2013; and the matter was listed on several dates before the CESTAT but got adjourned for one reason or the other though always attended at by or on behalf of the petitioner-assessee.

2. It is submitted that the impugned demand notice has been issued essentially with reference to the Circular No. 967/01/2013-CX dated 01.01.2013 although the said Circular has already been declared non est by this Court; and the coercive recovery proceedings pursuant to impugned Circular have been

prohibited while directing the respondents to ensure hearing of the appeals and interim applications at the earliest. The decision of a Co-ordinate Bench in DBCWP No. 1891/2013 : Manglam Cement Ltd. v. The Superintendent, Central Excise Range-III, Kota & Ors. has been referred.

3. The present one is yet another case where this Court is rather dismayed that despite a considered decision of this Court holding the questioned circular as non est, the respondents, with impunity, have chosen to issue such demand notice with reference to the very same Circular; and then, the representation made by the petitioner-assessee has also been rejected with reference to the very same Circular.

4. It remains rather indisputable that a final view has been taken in the order dated 01.03.2013 passed at the Jaipur Bench of this Court in a batch of petitions led by DBCWP No. 1891/2013 : Manglam Cement Ltd. v. The Superintendent, Central Excise Range-III, Kota & Ors. holding the impugned Circular No. 967/01/2013-CX dated 01.01.2013, obligating the concerned authorities to initiate recovery proceedings on the expiry of period as mentioned therein, non est insofar it relates to the situation where the appeals with stay applications had been filed but no stay could be granted and the stay applications remained pending for the reasons not attributable to the assessees in any manner. In the order dated 01.03.2013 passed in Manglam Cement Ltd. (supra), this Court observed, held and directed as under:--

In the wake of the above, we hold that the impugned circular dated 1.1.2013 obligating the concerned authorities to initiate recovery proceedings on the expiry of period as mentioned therein so far as it relates to the situations where appeals with stay applications have been filed, but no stay had been granted and the stay applications had been kept pending for reasons not attributable in any manner whatsoever to the petitioners/assessees and resultantly, no interim relief had been granted, is non est. Consequently, no coercive steps for the recovery of the demands vis-?-vis such petitioners would be initiated. Instead, the respondents would ensure that such appeals and interim applications are heard as contemplated by the Act at the earliest and preferably within a period of three weeks herefrom. The petitioners would unfailingly cooperate with the forums to meet the time frame fixed. It is made clear that this Court has not offered its comment on the merits of the appeals and/or interim applications filed and that the concerned forums would take appropriate decisions thereon without in any manner influenced by this determination.

The petitions are thus allowed to the extent as indicated hereinabove. No costs. A copy of this order be placed in all the files.

5. Following the aforesaid order dated 01.03.2013, a Coordinate Bench of this Court further passed the following order on 15.04.2013 in DBCWP No. 3776/2013:--

Heard Mr. Rajvendra Saraswat, learned counsel for the petitioner.

In challenge is the Circular No. 967/01/2013-CX dated 1.1.2013.

A coordinate bench of this Court vide judgment dated 1.3.2013 in a batch of writ petitions, the lead case being D.B. Civil Writ Petition No. 1891/2013 (Manglam Cement Ltd. v. The Superintendent, Central Excise Range-III, Kota & Ors.), has interfered with the circular to the extent as indicated therein.

Having regard to the identicalness of the challenge made in the instant writ petition, we deem it expedient to close this matter by giving liberty to the petitioner to lay before the authority concerned a copy of the judgment and order dated 1.3.2013 for the needful.

The stay application also stands disposed of.

6. With the legal position having been concluded by this Court more than 8 months back; and in no uncertain terms, this Court having pronounced the Circular in question "non est" insofar relating to the situation where the stay applications remain pending in the appellate fora, it sounds rather strange that the concerned Assistant Commissioner, Central Excise Division, Udaipur has at all chosen to issue the questioned notice on the basis of the same Circular!

7. It is moreover astonishing that the Additional Commissioner (Recovery), Central Excise Commissionerate, Jaipur-II has rejected the representation made by the petitioner in his communication dated 03/07.10.2013 only with reference to the said Circular dated 01.01.2013 and without any regard to the order as passed by this Court in Manglam Cement Ltd. (supra).

8. It needs hardly any mention that the decision in Manglam Cement Limited (supra) as rendered by this Court has to be in the conscious knowledge of every relevant person and officers of the respondent Department. Neither in the impugned demand notice dated 12.09.2013 nor in the impugned communication dated 03/07.10.2013 there is any indication that the stay application in appeal remains pending for any reason attributable to the petitioner-assessee.

9. Prima facie, the aforesaid demand notice dated 12.09.2013 (Annex. ''F'') as also the communication dated 03/07.10.2013 (Annex. ''J'') are of a show of total disrespect to and defiance of the order passed by this Court. The order passed by this Court on 01.03.2013, both in its letter as also in its spirit, leaves nothing to doubt or guess that this Court has pronounced the impugned Circular dated 01.01.2013 non est in relation to the situation as obtaining in the present case. Any attempt to yet initiate the coercive proceedings on the basis of the this very Circular gives rise to serious questions on the approach and intentions of the respondents.

10. Having regard to the circumstances, we feel impelled that even while admitting this writ petition and staying operation of the impugned order, a notice be issued to the Assistant Commissioner, Central Excise Division, Udaipur and the Additional Commissioner (Recovery), Central Excise Commissionerate, Jaipur-II to show cause as to why the proceedings for having committed contempt of the

order of this Court dated 01.03.2013 as passed in DBCWP No. 1891/2013 be not initiated.

11. In view of the above, this writ petition is admitted for hearing. Notices be issued to the respondents. Notices of the stay application be also issued.

12. In the meanwhile and until further orders, operation, effect and execution of the impugned demand notice dated 12.09.2013 (Annex. ''F'') as also the communication dated 03/07.10.2013 (Annex. ''J'') shall remain stayed.

13. To put the things straight, it is made clear that the attachment of Bank Account of the petitioner-assessee under the demand notice impugned shall stand vacated. However, as at present, no specific order is being passed in relation to the amount of Rs. 1,98,256/-, said to have already been recovered by the respondents for which, appropriate orders shall be considered after service.

14. The names of the present incumbents of the offices of the Assistant Commissioner, Central Excise Division, Udaipur and the Additional Commissioner (Recovery), Central Excise Commissionerate, Jaipur-II shall be supplied by the petitioner within three days from today.

15. A separate suo motu contempt petition be registered with a copy of this order as also a copy of the impugned demand notice dated 12.09.2013 (Annex. ''F'') and communication dated 03/07.10.2013 (Annex. ''J''). Therein, a notice shall be issued to the incumbents of the offices of the Assistant Commissioner, Central Excise Division, Udaipur and the Additional Commissioner (Recovery), Central Excise Commissionerate, Jaipur-II to show cause as to why contempt proceedings be not initiated against him for deliberate defiance of the order dated 01.03.2013, passed by this Court in DBCWP No. 1891/2013 : Manglam Cement Ltd. v. The Superintendent, Central Excise Range-III, Kota & Ors. It goes without saying that this order or pendency of this writ petition shall otherwise not be of any effect on the merit-consideration of the appeal/stay application by the concerned Appellate Authority.