(2014) 01 KL CK 0074

In the High Court Of Kerala

Case No : WP(C) No. 31074 of 2009 (D)

Natural Wood and Veneers Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35F, 35G
Customs Act, 1962 — Section 130

Citation : (2014) 309 ELT 220

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : E.K. Madhavan and V. Krishna Menon, Advocate for the Appellant; Thomas Mathew Nellimoottil, SC, CB EX, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—Ext. P7 is under challenge in this writ petition. The petitioner is a company incorporated under the Companies Act, 1956 engaged in the business of manufacture and sale of plywood, veneer etc. The petitioner''s factory is situated in Vettickal.

2. The petitioner alleges that on 26-3-2007, search was conducted by the officers attached to the Director General, Central Excise Intelligence, Kochi unit and Central Excise Commissionerate, Kochi in the petitioner''s factory premises as well as in the premises of its distributors/dealers. The petitioner was thereafter served with a show cause notice dated 28-3-2005 alleging violation of the provisions of the Central Excise Act and Rules and proposing to demand duty with interest as well as penalty. The petitioner submitted explanation dated 20-9-2006 denying the statements and allegations as well as the liability to pay duty and penalty as proposed.

3. The Commissioner of Central Excise heard the petitioner on 13-2-2007 and passed an order dated 30-3-2007 levying an amount of Rs. 73,222/- with interest and imposing penalty for equal amount of duty demanded. Against that order, the petitioner filed an appeal before the Customs Excise and Service Tax

Appellate Tribunal at Bangalore. However, the Tribunal by order dated 11-8-2009 [2009 (244) E.L.T. 62 (Tri. - Bang.)] dismissed the appeal as not maintainable, as the petitioner had neither deposited the duty demanded nor filed an application for waiver under Section 35F of the Central Excise Act. According to the petitioner, he submitted an application for waiver of pre-deposit of duty demanded and penalty levied. Hence, he approached this Court challenging Ext. P7.

4. Arguments have been heard.

5. It is submitted that the petitioner has filed an application, as evidenced by Ext. P3, under the provisions of Section 35F of the Central Excise Act, 1944. It was also submitted that the petitioner was not informed at any point of time that the appeal was defective and copy of the show cause has to be furnished. Even in the notice also, it was not mentioned that the appeal was defective and copy of the show cause notice should be furnished. The petitioner has sought for an adjournment, as the notice intimating the hearing was received only on the day previous to the day fixed for hearing. Hence it appears from record, that the petitioner was denied an opportunity of being heard. I see valid force in the submission of the learned counsel for the petitioner that the order evidenced by Ext. P7 is passed in violation of the principles of natural justice. The learned Senior Counsel for the respondents inviting my attention to a decision of the Division Bench of Madras High Court in M/s. Metal Weld Electrodes and Metro Trading Company (Electrodes) P. Ltd. Vs. The Customs, Excise and Service Tax and The Commissioner of Central Excise, , submitted that this writ petition is not maintainable and the only remedy available to the petitioner is to file an appeal before this Court under Section 35G of the Central Excise Act, 1944 or Section 130 of the Customs Act, 1962. The aforesaid decision rests on its own facts and cannot be read into the facts of this case. Here, there is clear violation of the principles of natural justice as the petitioner was not afforded an opportunity of being heard. The availability of the remedy of appeal before this Court will not stand in the way of the petitioner in getting a relief as prayed for. Hence, this Court is of the definite view that the writ petition is maintainable. No prejudice would be caused to the second respondent as this Court is only granting the relief of re-hearing the appeal by the 2nd respondent.

Therefore, the writ petition is allowed. Ext. P7 is quashed. The 2nd respondent Tribunal is directed to re-hear the memorandum of appeal evidenced by Ext. P2 and dispose of the same in accordance with law, at the earliest.

