(2010) 06 AHC CK 0014

In the Allahabad High Court

Parmarth Iron Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise-I and Another RESPONDENT

Date of Decision : 15-06-2010

Acts Referred:

Citation : (2010) 20 STR 705

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Sarvasri Pradeep Agrawal and Krishna Agrawal, learned Counsel for the petitioner as well as learned Standing Counsel and perused the record.

2. It emerges from the record that as a result of search and seizure in the factory and premises of the petitioner as well as investigation etc. formal proceedings were initiated against the petitioner by the Central Excise Department. In furtherance of the proceedings, a show cause notice was issued against him on 7.7.2008. Lateron, a corrigendum was issued to the show cause notice by the Director General of Central Excise Intelligence on 9.9.2008. The petitioner submitted a formal application 20.1.2009, requesting the Commissioner, Central Excise, Meerut-I to make available to him physical form/ hard copies of the documents relied upon by the Department and referred in the show cause notice dated 7.7.2008. Detailed submissions were made that the copies of the documents mentioned in the show cause notice and other materials were necessary for offering proper and adequate reply to the show cause notice. The petitioner has placed reliance on some relevant Circulars issued by the Department on 25.4.1988, 10.6.1988 and 18.9.2006. These Circulars are statutory in nature and provide detailed guidelines to be followed during the proceedings. The Commissioner of Central Excise, Meerut-I had indicated in his order dated 27.10.2009 that a C.D. containing the said documents has been made available to him. Responding to this, the petitioner filed two Applications

on 23.11.2009, one, for supply of photostat copies of the relied upon documents and the other seeking cross-examination of the persons, whose statements have been relied upon by the Department. The copies of the documents, relied upon in the show cause notice and other materials have not been supplied to the petitioner. The petitioner requested for supply of hard copies, that is, photostat copies of all the documents relied upon and referred in the show cause notice. Since some reports were relied upon in the statements of witnesses, which were recorded, it was incumbent upon the Authorities to allow the petitioner to have opportunity of cross-examination of various persons, details of which were given in the application dated 23.11.2009. The Department has fixed 10th June, 2010 as a date for final hearing without making available all above documents and opportunity of cross-examining the witnesses.

3. Sri Pradeep Agrawal, learned Counsel for the petitioner has placed reliance on a judgment rendered by a Division Bench of this Court in Writ Petition (Tax) 249 of 2007, Bhushan Steel & Strips Ltd. v. Union of India and others, on 1.3.2007 in support of his submissions. In this case, the Division Bench of this Court has placed reliance on several judgments rendered by Hon''ble Apex Court and other High Courts.

4. Next judgment relied upon by the learned Counsel for the petitioner is J and K Cigarettes Ltd. and Others Vs. Collector of Central Excise and Others, J & K Cigarettes Ltd. v. Collector of Central Excise in support of his submission.

5. After hearing learned Counsel for the petitioner as well as learned Standing Counsel and perusing the materials on record, this Court finds substance in the submissions of learned Counsel for the petitioner. In Tribhuvandas Bhimji Zaveri and Another Vs. Collector of Central Excise, the Hon''ble Apex Court held that non return of the documents by the authorities may severely prejudice the right of the party to offer the proper explanation and to that extent the principles of natural justice may stand violated. In absence of supply of the copies of the documents a party may be deprived of from leading proper evidence and he may not be able to give proper answer of the case against him by adducing positive evidence in support of his own case together with the right to contradict all other allegations. Deciding a case without furnishing proper documents by the Revenue ignoring the essentials of justice, may render the order a nullity. (Vide Union of India and another Vs. Ex Constable Amrik Singh,

6. Similar views have been expressed in following judgments:

7. General Spares Industries Ltd. Vs. Union of India, Roshan Lal Agarwal Vs. Union of India (UOI), Sunder Ispat Limited Vs. Commissioner of Cus. and C. Ex., Hyderabad, Premium Intertrade Pvt. Ltd. Vs. Union of India (UOI), Johnson and Johnson Ltd. Vs. Deputy Chief Controller of Imports and Exports and Another, Kellogg India Private Limited. and Madhukar Patil Vs. Union of India (UOI), Asst. Commission, Central Excise and Customs and Commissioner of Central Excise, and Silicon Graphics System (INDIA) Private Limited Vs. Union of India (UOI), .

8. In view of above legal position, this Court is also of the view that its obligatory on the part of the revenue to return non-relied documents to the assessee. The relied documents or copies thereof must also be furnished to enable the petitioner to plead its case effectively and defend itself.

9. In view of above, the writ petition is finally disposed of with the directions to the respondents No. 1 and 2 to return original and non-relied documents and to furnish the copies (hard/photo copies) of the relied upon documents to the petitioner. The petitioner shall also be permitted to inspect the original documents and the materials sought to be used against him during the proceedings.

10. In the present case, the statements of some witnesses have been relied upon by the Revenue during investigations. The petitioner shall also be allowed an opportunity of cross-examining the persons whose statements have been relied upon and referred to in the show cause notice. It is natural that a person facing such an enquiry to have opportunity to cross-examine an author of a document or a person who has deposed against him during the course of an enquiry. Accordingly, the respondents shall reconsider the order and allow the petitioner aforesaid opportunities. In the absence of above opportunities, the petitioner may not be in a position to render proper assistance to the Department. The respondents shall ensure compliance of the above directions before proceeding further.