(2012) 02 AHC CK 0393

In the Allahabad High Court

Case No : Writ Tax No. 1685 of 2011

Parmarth Iron Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise-I RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : (2017) 346 ELT 570

Hon'ble Judges : Sunil Ambwani and Manoj Misra, JJ.

Bench : Division Bench

Advocate : S/Shri M.B. Mathur, Preetpal Singh Rathore and V.V. Gautam, Counsels, for the Petitioner; S/Shri S.P. Kesarwani, Sr. S.C. and R.C. Shukla, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri V.B. Gautam, learned counsel appearing for the petitioner-company. Shri R.C. Shukla appears for the respondents.

2. By this writ petition, as instituted on 1-12-2011, the petitioner has prayed for directions to the respondents to comply with the earlier order dated 29-11-2010 passed by this Court in Special Appeal Defective No. 741 of 2010 [2010 (260) E.L.T. 514 (All.)], and accordingly, supply all the documents relating to the case of the petitioner. The petitioner has further prayed that the respondents be restrained from adjudicating the matter, unless the clear and legible copies of all the relied upon documents are supplied, and the original non-relied upon documents are returned to the petitioner, as directed by the High Court.

3. During the pendency of the writ petition, an Adjudication Order was passed by the Commissioner of Central Excise-1, Meerut on 8-12-2011. The writ petition has been amended challenging the order dated 8-12-2011.

4. The substance of the contention is that both the relied upon and non-relied upon documents were not supplied and that the petitioner was not afforded opportunity to cross-examine the witnesses, and on which it is stated that the

Adjudication Order is without jurisdiction. The High Court, it is submitted, can entertain the writ petition, where principles of natural justice are violated in view of A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani and Another - 1983 (13) E.L.T. 1327 (S.C.); Grasim Industries Ltd. v. Union of India - 2012 (276) E.L.T. 298 (Bom.); Hotel Ashoka v. Assistant Commissioner of Commercial Taxes - 2012 (276) E.L.T. 433 (S.C.) and a judgment of this Court in Novamet Industries v. Union of India - 2008 (227) E.L.T. 363 (All) : 2009 (13) S.T.R. 108 (All.). It is submitted that not only relied upon but also non-relied upon documents were not supplied and in absence of the supply of the documents, the opportunity to cross-examine as alleged to have been given, loses its significance.

5. Shri R.C. Shukla, learned counsel appearing for the respondents has raised an objection to the maintainability of the writ petition after its amendment, by which the Adjudication Order dated 8-12-2011 has been challenged. He submits that the petitioner has a right to statutory appeal to the Custom, Excise and Service Tax Appellate Tribunal, where he can ventilate its grievance.

6. Shri R.C. Shukla submits that earlier the petitioner filed a Writ Petition No. 898 of 2010 before learned Single Judge. The writ petition was disposed of on 15-6-2010 with directions that it was obligatory on the part of the revenue to return non-relied documents to the assessee. The relied documents or copies thereof were to be furnished to enable the petitioner to plead its case and defend itself.

7. The Commissioner of Central Excise, Meerut-I, Meerut filed a Special Appeal Defective No. 741 of 2010 in which this Court passed an order on 29-11-2010, as follows :-

"16. We, therefore, have no hesitation in holding, that there is no requirement in the Act or Rules, nor do the principles of natural justice and fair play require that the witnesses whose statements were recorded and relied upon to issue the show cause notice, are liable to be examined at that stage. If the Revenue choose not to examine any witnesses in adjudication, their statements cannot be considered as evidence. However, if the Revenue choose to rely on the statements, then in that event, the persons whose statements are relied upon have to be made available for cross-examination for the evidence or statement to be considered.

17. We are, therefore, clearly of the opinion that there is no right, procedurally or substantively or in compliance with natural justice and fair play, to make available the witnesses whose statements were recorded, for cross-examination before the reply to the show cause notice is filed and before adjudication commences. The exercise of cross-examination commences only after the proceedings for adjudication have commenced. Having said so, in our opinion, the first question is answered accordingly.

18. Considering the second contention, it is true that in view of the Adjudication

Manual as also the judgment in Sanghi Textile Processors (P) Ltd. (supra), the assessee is entitled to the reasonable cost incurred for getting the copies of the documents. In the instant case, there is no dispute that a soft copy containing the documents has been made available. The grievance of the respondent was that he must be given hard copies of the documents as some of the documents are ineligible as shown from the soft copies. Considering the fact that the documents have been made available in the form of a C.D., one can read the same. In our opinion, that would amount to sufficient compliance though may not be strict compliance. In case, there are any documents, which are not clear, then in that event, if the respondent applies for those documents, then the Department shall, within 15 days of the receipt of the letter in respect of those copies, make them available to the respondent herein at the Department''s cost.

19. Having said so, in our opinion, the impugned order insofar as the cross-examination is concerned, is liable to be set aside. Accordingly, it is set aside. Insofar as providing the documents is concerned, it shall be in terms of what has been stated above.

20. The appeal is disposed of, accordingly."

8. Shri R.C. Shukla has relied upon affidavit filed in reply to the amendment application, allegedly that the plea of non-supply of the relied upon and non-relied upon documents, and the denial of cross-examination, has been taken only to avoid the filing of appeal. It is submitted that the entire relied upon documents running upto 40,000 pages, were supplied in the form of a D.V.D. to the petitioner, to which there is no denial. So far as non-relied upon documents is concerned, the petitioner was repeatedly asked vide letters No. 4574, dated 7-9-2009; 5615, dated 18-11-2009; 3893, dated 21-6-2010 and 8354, dated 29-11-2010 to collect them, but the petitioner for the reasons best known to them did not collect these documents. It is submitted that the opportunity of cross-examination was also given.

9. The show cause notice was issued to the petitioner in pursuance to the search conducted on 10-7-2007 in which the incriminating documents were recovered. The proceedings of adjudication were held up for a long time on account of repeated requests for supply of relied upon and non-relied upon documents; the request for cross-examination and the filing of writ petition and Special Appeal in this Court.

10. This Court held in Special Appeal Defective No. 741 of 2010, decided on 29-11-2010 that there was no question of cross-examination, until adjudication, at the stage of issuing show cause notice.

11. The question, whether the department only offered and was not willing to hand over the documents, and whether the petitioner did not actually collect them in spite of the notices given to them, can be looked into in the appeal.

12. In the facts and circumstances, in which the petitioner is raising an issue in

the writ petition under Article 226 of the Constitution of India to record findings on the compliance of the directions issued by this Court, as well as the question, whether the non-relied upon documents were actually supplied, failing which the opportunity of cross-examination was a futility, can also be looked into by the Appellate Authority. These are questions of facts, which will require findings, after scrutiny of records, to examine the plea of denial of opportunity given to the petitioner in the proceedings of adjudication.

13. The writ petition is dismissed relegating the petitioner to file statutory Appeal against the order, in the Customs, Central Excise and Service Tax Appellate Tribunal. As this writ petition was pending since 1-12-2011, in case the petitioner files an appeal along with the application for condonation of delay within a week, the question of delay may be considered by the Tribunal, in accordance with law, taking into account the time spent in pursuing the writ petition in the High Court.