(2000) 01 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2179 of 1999

P.G.O. Processors Private Limited — APPELLANT

Vs

Commissioner, C. Ex. — RESPONDENT

Date of Decision : 24-01-2000

Acts Referred:

Central Excise Rules, 1944 — Rule 174
Central Excises and Salt Act, 1944 — Section 11A, 33, 3A, 3A(1)

Citation : (2000) 122 ELT 26 : (2000) 2 RLW 987 : (2000) 4 WLC 726

Hon'ble Judges : V.S. Kokje, J;S.C. Mital, J

Bench : Division Bench

Advocate : L.R. Mehta, for the Appellant; N.M. Lodha, for the Respondent

Final Decision : Allowed

Judgement

V.S. Kokje, J.—The petitioner is a company incorporated under the Indian Companies Act, 1956. The petitioner Company has a unit at Bhilwara wherein Man Made Fabrics are manufactured/processed. The petitioner had taken on lease the land, the building and the Plant and Machinery of the process house owned by M/s. Suzuki Textile Ltd., Bhilwara. They also entered into a job contract with M/s. Suzuki Textiles Ltd. The non-petitioners granted a Registration Certificate to the petitioner under Rule 174 of the Central Excise Rules, 1944. The petitioner started processing of Fabrics on 3rd June, 1997 and had been regularly submitting price declaration and monthly returns to the Range Superintendent, Central Excise showing a regular payment of excise duty on the Fabrics processed by it from time to time and such payments were accepted. The petitioner''s premises were raided by the Anti-Evasion Party of Central Excise Department, Jaipur on 19th and 20th January, 1998 and on 19th and 20th February, 1998. Certain documents, and books of accounts were seized.

2. By the Finance Act, 1977 Section 3A was introduced in the Central Excise Act, 1944 empowering the Central Govt. to charge excise duty on the basis of capacity of production in respect of certain goods. Rules were made by the

Central Govt. for determination of annual capacity of production of the specified goods notified under Sub-section (1) of Section 3A of the Act. The goods were specified by another notification under sub-section (a) of Section 3A of the Act. The Central Govt. also specified the rate of excise duty on textile fabrics, falling under certain headings of the schedule to the Central Excise Tariff Act, 1985, manufactured or produced by an independent processor with the aid of a hot-air stenter vide notification No. 36/98 dated 10.12.1998. The petitioner claiming itself to be an independent processor claimed benefit under the aforesaid notification and claimed that it was chargeable to duty u/s 3A and not u/s 3 of the Act. On 30.12.1998 Additional Commissioner wrote to the petitioner in response to the declaration given by it on 16.12.1998 that the process house for which the declaration was made was owned by M/s. Suzuki Textiles Ltd., a company having proprietary interests in weaving of fabrics also and till the matter was decided the request of the petitioner for determination of the annual production in their favour under the Scheme cannot be entertained. Upon this, the petitioner filed D.B. Civil Writ Petition No. 11/99 in this Court challenging the aforesaid direction. On 22.04.1999 that petition was allowed and letter dated 30.12.1998 of the Additional Commissioner and the letter dated 30.12.1998 issued by the Supdt. Central Excise were quashed. It was held by this Court that the respondents cannot contend that the petitioner company was not an independent manufacturer or independent processor without first revoking or suspending the Registration Certificate under Rule 174 of the Central Excise Rules granted to the petitioner.

3. The Commissioner of Central Excise, the respondent No. 2, issued a show cause notice on 31.05.1999 to the petitioner and called upon it to show cause as to why the petitioner should not be denied the status of an independent processor as defined in the Notification No. 36/98-C.E. (N.T.) and No. 42/98-C.E. (N.T.) both dated 10.12.1998 in view of the allegations made in the show cause notice dated 15.01.1999. After receiving the first show cause notice dated 15.01.1999, during the pendency of earlier petition itself the petitioner had moved applications dated 18.02.1999, 25.02.1999, 08.03.1999, 12.03.1999, 27.03.1999, 03.04.1999 and 16.04.1999 for obtaining copies of the documents mentioned in Annex. 2 of the show cause notice dated 15.01.1999 as those documents were being relied upon by the department for taking the action proposed in the said show cause notice. The respondents did not allow the request of supply of copies but instead were prepared to give an opportunity to examine the records and obtain photo copies of the same. After some correspondence and after receiving some of the copies required but not all, the petitioner filed this petition praying for quashing of the show cause notice dated 15.01.1999 and 31.05.1999, restraining the respondent No. 1 from proceeding further with the show cause notice dated 15.01.1999 and 31.05.1999, for a declaration that the Registration Certificate issued to the petitioner is not liable to be revoked and/or suspended and for a declaration that the petitioner company was an independent processor within the meaning of notifications 36/98 and

42/98 both dated 10.12.1998. In the alternative it was also prayed that respondent No. 1 be directed to furnish authenticated copies of the documents mentioned in the letter dated 19.06.1999 and on which reliance has been placed in the impugned notices and the respondents may be restrained from proceeding against the petitioner in pursuance of the impugned show cause notices dated 15.01.1999 and 31.05.1999 without supplying the copies demanded by the petitioner in the letter dated 19.06.1999.

4. The respondents vehemently opposed the petition on various grounds. On 24.06.1999 a Division Bench of this Court stayed further proceeding in pursuance to impugned notices dated 15.01.1999 and 31.05.1999. It was however directed that the respondents were at liberty to proceed in pursuance to the said notices if they furnish the authenticated copies of the documents mentioned in Annex. 2 of the show cause notice dated 15.01.1999 to the petitioner. The petition was ultimately heard finally with the consent of the parties.

5. At the hearing the petitioner pressed only one prayer, that of supply of the copies of the documents. The grounds of challenge to the show cause notice were not pursued and the arguments were confined to only necessity of furnishing authenticated copies of the documents relied upon by the respondents in support of the show cause notice as listed in Schedule-2 of the show cause notice dated 15.01.1999.

6. The learned Counsel for the petitioner submitted that non supply of documents relied upon by the respondents in support of the show cause notice would be a serious violation of principles of natural justice.

7. Relying on the decision of the Supreme Court in Sahi Ram Vs. Avtar Singh and Others, the learned Counsel submitted that a show cause notice must set out all the factual material and should be accompanied by copies of all documents relied upon by the State Govt. in support of the show cause notice. Single Bench decisions of the Karnataka High Court in Reletronics Ltd. v. Union of India [1994 (71) E.L.T. 26 (Kar.)] and of Rajasthan High Court in Roshan Lal Agarwal v. Union of India [1994 (74) E.L.T. 562 (Raj.)] were also relied on.

8. The learned Counsel for the respondents raised a serious objection to the maintainability of the petition as the petition challenges an action at the show cause notice stage itself. It was submitted that the petitioner should not be allowed to jump the departmental hierarchy set up by the Act and should wait for the decision of the Excise Authorities and then file departmental appeals, after disposal of which only, the petition could be filed and entertained. It was also submitted that when the respondents had shown their readiness to permit the petitioner to inspect the documents and take photocopies of the relevant documents, no grievance could be made by the petitioner and the petition should not be entertained on that count also.

9. Having heard the learned Counsel and having perused the record we are of

the view that the respondents are unnecessarily delaying the adjudication of the dispute by harping on technicalities. The respondents'' insistence on not furnishing copies of certain documents clearly and undisputedly relied upon by them in the show cause notice has given an opportunity to the petitioner to approach this Court and stall the adjudication on the show cause notice. There is no doubt that show cause notice dated 15.01.1999 Annex. 17 to the petition was accompanied by Annex. 2 titled "list of documents relied upon for issuance of the show cause notice to M/s. Suzuki Processors (a unit of Suzuki Textile Ltd.) Bhilwara. M/s. PGO Processors (P) Ltd. Bhilwara and ors. vide C.No. V(55) 15/ OFF/96/98 dt...". There were two columns of Annex. 2. Column No. 1 was serial number and column No. 2 was "Particulars of the documents relied upon". It is not the dispute that the documents of which authenticated copies were asked by the petitioner were only those which found place in Annex. 2. There is no document which is not in Annex. 2 of which authenticated copy has been asked for by the petitioner. The relevance of the documents is, therefore, clearly established.

10. The only question therefore which remains to be answered is whether the petitioner can insist on supply of an authenticated copy of a document or an opportunity to inspect the document and if desired obtain a photo copy thereof would serve the ends of justice and meet the requirements of principles of natural justice.

11. In Sahi Ram''s case (supra) in paragraph 9, the Court observed that once the learned Single Judge came to the conclusion that certain documents relating to inspection reports were not supplied or that the facts relied upon by the State Govt. and the Central Govt. in their orders were not put to the respondent asking his explanation, the learned Single Judge should have remitted the matter back instead of straightway setting aside the termination of lease and restoring it back. In paragraph 13, the Court directed that show cause notice should set out all the factual material relied upon against the respondent and the material relied upon by the Central Govt. in its order. It was further directed that the show cause notice should be accompanied by copies of all the documents as were relied upon by the respondents. Though the question as to whether inspection with liberty to take photo copies would be an effective substitute to supply of copies of the documents was not before the Court but it appears that the Supreme Court was of the view that supply of copies was necessary.

12. The Single Bench decision of the Karnataka High Court in Reletronics Ltd. (supra) is not on the question as to whether inspection would be a proper substitute for supply of copies. However, it only observes that the requirement is to furnish copies of the materials relied upon in the show cause notice and not on the merits and other records which is referred. There is a difference between relying upon documents and referring to the same. As already seen in the facts of this case, it cannot be disputed that the documents were relied on in the show cause notice and they were not just referred to. In Roshanlal Agarwal''s case

(supra), a learned Single Judge of this Court only directed the Department of the Union of India to make available to the assessee concerned copies of all documents and records relied upon by the department. Again in this case, the question whether inspection would be a proper substitute for supply of copies was not before the Court. The learned Counsel for the petitioner has also relied on the decision of the Customs, Excise and Gold (Control) Appellate Tribunal in Jayantilal A. Shah and Am. v. Commr. of Central Excise, Mumbai VI [1999 (34) RLT 466]. In that case the copies of the relied upon documents were supplied along with the show cause notice. But the copies were illegible and on a complaint made, the assessee was told to inspect the record and take photostat copies. This was not approved by the CEGAT observing that when the Department gives a show cause notice, proposing to initiate action for alleged violation of law, it is the duty cast upon the department to serve legible copies on which reliance is being made by the department for initiating action. In this case, of course the opportunity to inspect the document and take photocopies was not considered to be a proper substitute for supply of legible copies of the relied upon documents. However, since the documents, though illegible, were supplied along with the show cause notice, it was clear that the department also was initially of the opinion that it was necessary to supply copies of those documents.

13. The learned Counsel for the respondents has relied upon the decision of the Supreme Court in Sanghi Textile Processors (P) Ltd. v. Collector of Central Excise [1993 (65) E.L.T. 357 (S.C.)]. In that case the documents relied upon were voluminous and the assessee asked for copies of all the documents on which the Collector, Central Excise, proposed to rely. It was suggested by the Department that since the documents were voluminous and spread out, containing of number of registers, files and other records, the assessee may inspect the documents and make copies, photostat or otherwise of whatever documents they wish to have. The Supreme Court found this suggestion to be reasonable as otherwise it would have been a struggle with infinity for the department to supply copies of each and every document. In the circumstances, the Supreme Court found out a reasonable pragmatic solution by requiring the Collector to have a meeting with the assessee and their learned Counsel to find out a practical theory on identifying essential documents required to be made copies of. The Collector was also required to sift the seized documents and to identify the documents essential for the department so that the non-essential surplusage could be weeded out to reduce the number of documents. It was also directed that the reasonable expenditure for copying whatever documents the petitioner would ultimately find reasonably necessary to take copies of be reimbursed by the department to the petitioners. Thus, this case cannot be an authority for the proposition that the department was not obliged to supply copies of the documents relied upon. On the contrary, the obligation of the department to supply copies is clearly accepted by this decision by making the department to pay for the preparation of such copies. In the case before us, it has not been shown that the documents are so voluminous that it is not practicable to make

copies and furnish the same to the petitioner. The case is clearly distinguishable on facts. The other case relied on by the learned Counsel for the respondents is a decision of the Supreme Court in State of U.P. Vs. Shatrughan Lal and Another, This is a decision in a service matter and does not squarely apply to the case before us. Only because of a departmental enquiry against a public servant, inspection of documents may be ordered in lieu of supply of copies does not mean that the same analogy can be applied to taxation matter governed by specific rules. A Single Bench judgment of the Calcutta High Court in Chandrakant Seth Vs. Collector of Customs, was also cited but it does not apply to the facts of the case.

14. In the Principles of Administrative Law by M.P. Jain and S.N. Jain, Fourth Edition of 1986 page 248, after discussing several decisions it was observed as follows:-

"While the principle is well established that the person concerned should be adequately informed of the case against him, there may be questions raised about the extent and content of the information to be given. Courts may have to decide whether in a particular case all the relevant material or evidence was disclosed to him or not. The court may hold in a case that it was not necessary to disclose a particular document or that what was disclosed was adequate; the extent and content of the information to be disclosed would depend upon the facts of each case."

We fully endorse the aforesaid view.

15. In the light of the aforesaid discussion, we allow this petition and direct the respondent No. 1 to furnish authentic copies of the documents relied upon in the show cause notices dated 15.01.1999 and 31.05.1999, as enumerated in the petitioner''s letter dated 19.06.1999 addressed to the respondent No. 1 and proceed to adjudicate on the show cause notice only after supply of such copies.

