(2014) 01 AHC CK 0064

In the Allahabad High Court

Case No : Writ Tax No. 1022 of 2013

Raghunath International Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Central Excises and Salt Act, 1944 — Section 9D
Constitution of India, 1950 — Article 226
Central Excises and Salt Act, 1944 — Section 9D
Constitution of India, 1950 — Article 226
Central Excises and Salt Act, 1944 — Section 9D

Citation : (2014) 310 ELT 504 : (2014) 44 GST 317

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Dilip Gupta, J

Bench : Division Bench

Advocate : Amitabh Agarwal and Vikram Chaudhary, Advocate for the Appellant; B.K. Singh Raghubanshi, Advocate for the Respondent

Judgement

1. The reliefs for which the petition has been filed, during the pendency of an adjudication proceeding, are as follows:--

(i) Issue a writ of mandamus or a writ, order or direction in the nature of Mandamus, directing the Respondent No. 2:

(a) To expeditiously comply with the mandate of binding precedent of this Hon''ble Court in the matter of Parmarth Iron (P.) Ltd. (supra) and other binding precedents r/w. section 9D of the Central Excise Act, 1944, and to summon all witnesses for their examination by Revenue if the same are to be relied upon for the purpose of adjudication.

(b) To permit the petitioner to cross-examine the individuals, a list whereof is already provided by the petitioner in its communication dated 7-3-2012.

(c) To return to the petitioner all documents taken over in the investigations but not relied upon in the show cause notice, so that the adjudication proceedings can be concluded thereafter by complying with the principles of natural justice.

(ii) To hold as illegal, null and void, the adjudication order, if any already passed but not communicated or if it would be passed after filing of the instant petition, on the vice of principles of natural justice and for not following the mandate of the law laid down by this Hon''ble Court in the case Parmarth Iron (supra) and other binding precedents r/w. section 9D of the Act.

Admittedly the adjudication proceeding in pursuance of the notice to show cause dated 1 October 2009 is pending before the Commissioner, Central Excise, Kanpur.

2. The contention of the petitioner is that in view of the judgment of a Division Bench of this Court in Commissioner of Central Excise Vs. Parmarth Iron Pvt. Ltd., , the adjudicating authority must give to the petitioner an opportunity to cross-examine those witnesses whose statements are sought to be relied upon unless any of the exceptions mentioned in section 9D of the Central Excise Act, 1944 exists.

3. In our view, since the adjudicating authority is seized of the proceedings, recourse to the writ proceedings under Article 226 of the Constitution is not warranted. It is always open to the petitioner to point out a binding judgment before the adjudicating authority and to make submissions on the relevant provisions of law. If that is done, it is needless to add that the adjudicating authority shall proceed in accordance with law.

4. We, hence, decline to interfere with the matter, at this stage. The writ petition is, accordingly, dismissed.

