(2013) 02 AHC CK 0335

In the Allahabad High Court

Case No : Writ Tax No. 536 of 2012

Rahat Industries APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2017) 346 ELT 562

Hon'ble Judges : Rajes Kumar and Pankaj Mithal, JJ.

Bench : Division Bench

Advocate : S/Shri S. Shekhar and V.K. Singh, Counsels, for the Petitioner; Shri Ashok Singh, A.S.G.I, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner No. 1 is a partnership firm and Smt. Rashida Parveen is one of its partners. The firm is engaged in manufacturing of Ayurvedic medicines which are excisable goods. A search was conducted by the Excise department on 20th November, 1997 and certain incriminating documents were seized which included computer floppies etc.

2. It is in connection with the aforesaid search and seizure that the petitioners have preferred this writ petition initially making a prayer for the quashing of the show cause notice dated 5-5-1999 and for a direction to issue fresh notice to the petitioners as well as to its sister concern Indian Chemical Company giving details of alleged evasion of excise duties. Subsequently, on 7-5-2012 the writ petition was amended making an additional prayer for a direction commanding respondents to supply the copies of relied upon documents and to return the non-relied documents in original to the petitioners for enabling them to reply to the above show cause notice and in the meantime to keep the proceedings pursuant to the show cause notice in abeyance.

3. During the course of arguments Sri V.K. Singh, Senior Advocate assisted by Sri S. Shekhar, learned counsel for the petitioners gave up the reliefs which were

earlier claimed in the writ petition and confined the matter with regard to the direction for the supply of photocopies of the relied upon and the originals of non-relied upon documents which were seized during the search and seizure operation.

4. Petitioners were permitted to file an affidavit giving details of the documents which they actually require. Accordingly a supplementary affidavit was filed.

5. The parties exchanged necessary affidavits and agreed for the final disposal of the petition at the admission stage on the basis of the material brought on record in relation to the prayer as made and confined to above.

6. Petitioners in the Paragraph 7 of the supplementary affidavit have mentioned four documents of which photocopies have been demanded and 8 non-relied upon documents including the floppies alleged to have been taken into custody at the time of the search.

7. The stand of the respondents in the counter affidavit which is actually a reply to the supplementary affidavit is that the copies of all documents which have been relied upon by the department in the show cause notice were supplied to the petitioners earlier. There is no necessity for the supply of the documents which have not been relied upon that too after a gap of 12 years. The object of the petitioners in raising the above demand is to prolong the proceedings by not filing reply. They have succeeded to a great extent as they have not filed reply on one pretext or the other since 5-5-1999.

8. The controversy in the petition is regarding submission of reply to the show cause notice dated 5-5-1999. It is for submitting reply to the aforesaid notice that the petitioners have raised two demands. The first is to supply copies of the certain documents relied upon in the said show cause notice. Secondly, to supply the originals of certain documents which were seized during the search though they have not been relied upon.

9. The said show cause notice calls upon the petitioners to submit explanation within 30 days of the receipt of the notice regarding the queries in relation to evasion of excise duty as enumerated therein failing which the proceedings would be taken ex parte. The said notice furnishes a list of 10 documents which have been relied upon including computer print outs Annexure-A to 14 which were enclosed with the show cause notice.

10. In the supplementary affidavit the following four relied upon documents have been demanded.

(1) Copy of Item No. 87 mentioned in Paragraph 3 and 4 of the show cause notice dated 5-5-1999;

(2) Attendance register of workers of the year 1995-96 mentioned at serial No. 2 of the notice;

(3) Floppies seized during search and kept in custody of the department under

orders of the High Court as the print outs thereof supplied to the petitioners were not the true copies of the floppies; and

(4) Copy of the second statement of Mohd. Afjal Noorani dated 20-11-1997.

11. In the reply to the above supplementary affidavit the respondents have categorically stated that Item No. 87 as demanded is a resumption memo which is actually Item No. 37. It has wrongly been mentioned as Item No. 87. It has duly been supplied. The other document i.e. register of workers of the year 1995-96 has been supplied to the petitioners by the Joint Commissioner (ADJ) Central Excise Allahabad vide letter dated 1-2-2012. The copy of the statement of Mohd. Afzal Noorani as demanded has also been supplied vide the aforesaid letter dated 1-2-2012.

12. As regards the Item No. 3 referred to above they are the floppies seized during the search. One Mohd. Hasan a representative of the petitioners has appeared before the Superintendent Central Excise as far back as on 7-1-1999 and the computer print outs taken from the floppies were shown to him whereupon he certified that the print outs were from the floppies which were seized during the search on 20-11-1997. Once the print outs of the same were duly supplied to the representative of the petitioners at the earlier stage as find mention in our decision dated 10-3-2010 passed in earlier Writ Tax No. 541 of 1999 filed by the petitioners the demand for it again by means of another writ petition is wholly misconceived and an abuse of the process of law particularly when it had already come on record that the material stored in the floppies so seized is irretrievable.

13. Thus in view of above, the demand of the floppies now on the pretext that the hard copies of the material stored in the floppies is not the one which appears in the floppy is a calculated attempt to keep the proceedings installed.

14. In view of the aforesaid facts and circumstances the demand of documents relied upon in the show cause notice as aforesaid is nothing but an exercise in futility with the ulterior object to obstruct the proceedings pursuant to the show cause notice.

15. The documents with which the petitioners are not being confronted are not at all material and relevant for the purposes of filing reply to the show cause notice. The demand of such documents is quite baseless and is again an attempt to keep the proceedings alive and not to allow the department to proceed further.

16. The court is completely at a loss to understand the difficulty on part of department in proceeding and passing an appropriate order despite direction of this court contained in its judgment and order dated 10-3-2010 to pass the final order on the basis of the material with which the petitioners have been confronted.

17. It is shocking that the department has failed to take action and pass appropriate order pursuant to the show cause notice despite the fact that the

notice itself clearly stated that if the reply is not filed within the time provided therein the department would proceed ex parte.

18. It is pertinent to note that the initial relief claimed in this petition was virtually the same as was claimed by the petitioners in the earlier writ petition referred to above i.e. for quashing of the show cause notice and one of the contentions was reply to the notice cannot be furnished for want of material stored in the floppies which argument was turned down by this court by referring to the show cause notice itself.

19. In view of the aforesaid facts and circumstances, we are of the opinion that the petitioners are not entitle to any relief in this petition which in effect is a second petition virtually for the same cause of action.

20. The writ petition is accordingly dismissed with direction to the respondents to pass appropriate final orders in accordance with law pursuant to the show cause notice dated 5-5-1999 positively within a period of three months from today and to report it compliance as soon as the order is so passed.