
(2014) 12 CAL CK 0030
In the Calcutta High Court
Case No : Writ Petition No. 28405 (W) of 2014

Satyam Iron and Steel Co. Pvt. Ltd.

APPELLANT

Vs

Commissioner of C. Ex.

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 319 ELT 78

Hon'ble Judges : Harish Tandon, J.

Bench : Single Bench

Advocate : Kartik Kurmi and S. Banerjee, for the Appellant; R.N. Das, for the Respondent

Judgement

Harish Tandon, J.—The petitioner has approached this Court by invoking the provision under Article 226 of the Constitution of India, challenging the show cause notice dated 20th August, 2014 issued by the Commissioner of Central Excise and Service Tax, Bolpur. From the perusal of the show cause notice, it appears that the authority have prima facie opined that the petitioner have shown the less production in ER-7 returns when the capacity of the kiln is to produce 72,000 metric tonnes. On the basis of such prima facie finding, a show cause notice is issued upon the petitioner as to why the Central Excise Duty amounting to Rs. Twenty five crores and odd have not recovered together with the penalty and the interest. According to the petitioner, the authority have made up their mind finally which could be deciphered from the language used in the said show cause notice and it would be a futile exercise to submit to the jurisdiction of the said authority. This Court does not agree with the aforesaid submissions. The show cause notice must contain the statements which the issuing authority have reason to believe that the same exist and invited the notice to plead the defence, which does not necessarily mean that the statements made in the said show cause notice attached any finality.

2. Since those statements are of tentative in nature and the authority has to

arrived at the decision upon receiving the defence as well as affording an opportunity of hearing to the notice and may ultimately conclude diametrically opposite to what has been said in the said show cause notice. The law is settled when a challenge is made before the High Court to a show cause notice issued.

3. This Bench has an occasion to address the said point in *Surya Alloy Industries Limited and Another Vs. Union of India and Another*, and held:

"22. The ratio which could be culled out from the aforesaid judgment is that the power of judicial review, under Article 226 of the Constitution of India, can be exercised where challenge to a show cause notice is made provided it is patently demonstrated that the same is issued without jurisdiction or it does not disclose any offence to have been committed. Ordinarily High Court should not embark to decide the factual disputes but relegate the party to submit the reply before the authority concerned who is obliged to decide the same. The aforesaid rule is, however, not free from exception. The exception, carved out in the case of *Indian Cardboard Industries Limited (Supra)*, in my opinion, still holds the field. The aforesaid exception can be aptly quoted hereunder:

"15. On the basis of the decisions cited it appears that the Court in exercise of its jurisdiction under Art. 226 of the Constitution will interfere with a show cause notice in the following circumstances:

- (1) When the show cause notice ex facie or on the basis of admitted facts does not disclose the offence alleged to be committed;
- (2) When the show cause notice is otherwise without jurisdiction;
- (3) When the show cause notice suffers from an incurable infirmity;
- (4) When the show cause notice is contrary to judicial decisions or decisions of the Tribunal;
- (5) When there is no material justifying the issuance of the show cause notice."

23. Therefore, to sum up, the High Court can interfere under Article 226 of the Constitution of India against a show cause notice where the same is issued by an authority in exercise of the power which is absent; the facts does not lead to commission of any offence; the show cause notice is otherwise without jurisdiction; it suffers from incurable infirmity; against the settled judicial decisions or the decisions of the Tribunal and bereft of material particulars justifying commission of offence.

24. The Supreme Court, in the case of *Union of India (UOI) and Another Vs. Vicco Laboratories*, also deprecates interference at the stage of issuance of show cause notice by the authorities unless it is without jurisdiction or in abuse of process of law in these words:

"31. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample

opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."

4. Since the authority have not decided the issue finally as the petitioner was invited to give defence to the allegations made in the said show cause notice, this Court does not feel that any case within the parameters, as set forth in the above noted report, has been made out.

5. Since the time to file reply to a show cause notice, has expired, as the petitioner decided to challenge the said show cause notice before this Court, this Court feels that the petitioner should be given another opportunity to file reply thereto. The petitioner is directed to file reply to the impugned show cause notice within three weeks from date.

6. The adjudicating authority is requested to dispose of the proceedings initiated against the petitioner within the reasonable period.

7. It goes without saying that this order shall not be construed to have any impact on the merit or demerit of the respective case of the parties and it is open to the authority to decide the proceedings independently without being influenced by any observations made herein and by referring the reasoned order contending the findings on the respective contentions of the parties.

8. With these observations, the writ petition is disposed of. There shall be no order as to costs.