(2014) 04 AHC CK 0059

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (Tax) No. 1825 of 2007

Siddhant Chemicals APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Citation : (2014) 5 ADJ 326 : (2014) 6 AWC 5515

Hon'ble Judges : Shashi Kant, J;Rajesh Kumar Agrawal, J

Bench : Division Bench

Advocate : Pankaj Bhatia and Nishant Mishra, Advocate for the Appellant; Raj Dev Tewari, S.K. Mishra and B.K.S. Raghuvanshi, Advocate for the Respondent

Judgement

1. Heard Sri Pankaj Bhatia, learned counsel for the petitioner and Sri B.K.S. Raghuvanshi, learned counsel for the State. By means of this writ petition, the petitioner is challenging the order dated 16.10.2007 passed by the respondent No. 3, Assistant Commissioner, Customs & Central Excise, Division Moradabad, Moradabad.

2. The brief facts of the case are that the respondent has issued a show-cause notice dated 1.9.2007 in respect of 20 claims of rebate, which have been served upon the petitioner on 3.9.2007. According to the petitioner, the reply of the said notice has been filed on 10.9.2007 and the impugned order has been passed on 16.10.2007. In paragraph 24 of the writ petition, it is submitted that the reply was served on the respondents on 10th September 2007. Paragraph 20 of the writ petition has been replied by respondent by paragraph 24 of the counter-affidavit, wherein filing of the reply has not been disputed. It is further submitted that a copy of the reply to the show-cause notice, is annexed as annexure 13 to the writ petition where it is clearly stated that the petitioner has not given evidence in reply to the show-cause notice dated 1.9.2007. The said averment made in reply, has no nexus with regard to the issue involved.

3. The petitioner has been required to show-cause within 7 days. In paragraph

19 of the writ petition, it is stated that the said show-cause notice has been received on 03rd September, 2007 and the petitioner has filed the reply on 10th September, 2007, the copy of the reply is Annexure 13 to the writ petition. In the reply to show-cause notice, apart from the challenge of the issue of the show-cause notice on the ground that the rebate has already been allowed and by issuing a fresh show-cause notice, the order cannot be reviewed. The petitioner has also stated that no details of alleged intelligence report has been provided so as to enable the petitioner to file/contest the allegations. The petitioner requested that the relied upon documents and the intelligence report be provided to the notice immediately. The impugned order has been passed on 16th October, 2007. The contention of the petitioner is that in the impugned order it has been wrongly stated that no reply has been filed by the petitioner and no request for personal hearing was made.

4. Sri B.K.S. Raghuvanshi, learned counsel submitted that from the order it appears that the reply was not filed by the petitioner and therefore, he proceeded to pass an ex parte order. Further, he submitted that since the CENVAT Credit has wrongly been availed on raw materials, which has been utilized in manufacturing of the product, on which the rebate has been claimed, as the such raw materials did not arrive inside the factory premises of the petitioner, therefore, the claim has been rightly rejected.

5. We have considered the rival submissions and perused the record. We are of the view that the impugned order passed is in violation of the Principles of Natural Justice. The notice was issued on 1.9.2007. 7 days'' time has been allowed to file the reply. Certain documents had been relied upon in the show-cause notice. In paragraph 19 of the writ petition, it is stated that the said show-cause notice has been received by the petitioner on 3rd September, 2007, therefore, the petitioner has 7 days'' time to file the reply. According to the petitioner, the reply was filed on 10.9.2007. In paragraph 24 of the writ petition, it is stated that the reply of the show-cause notice was filed on 10.9.2007. Para 24 of the writ petition has been replied by 24 of counter-affidavit, wherein filing of reply on 10.9.2007 has not been disputed. It is unfortunate that even though, the reply was received on 10th September, 2007 but in the impugned order, it is alleged that no reply has been filed and no request has been made for the personal hearing.

6. In view of the aforesaid facts and circumstances, without going into the merits of the case, we are of the view that the impugned order has been passed in gross violation of Principles of Natural Justice and therefore, is not sustainable and is liable to be set aside. The impugned order dated 16.10.2007 is hereby set aside. The matter is relegated to Adjudicating Authority to pass fresh order after giving opportunity of hearing in accordance with law.

7. Adjudicating Authority is directed to pass order within a period of six months from the date of presentation of certified copy of this order. The writ petition stands allowed, as stated above.

