(2015) 04 KAR CK 0365

In the Karnataka High Court

Case No : Writ Petition No. 2292 of 2015 and Writ Petition No. 45209 of 2014 (T-RES)

S.L. Industries APPELLANT

Vs

Commissioner of Central Excise and Service Tax, Mangalore RESPONDENT

Date of Decision : 25-04-2015

Acts Referred:

Citation : (2015) 324 ELT 141

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Chandrashekar, for the Appellant; Jeevan J. Neeralgi, Advocates for the Respondent

Judgement

Aravind Kumar, J—Petitioners in these two writ petitions are seeking for issue of writ of mandamus to respondent to consider the representations dated 15-4-2015, Annexures-C and D (in W.P. 2292/2015) and representation dated 12-4-2014, Annexure-B (in W.P. 45209/2014) contending inter alia that in order to reply to the show cause notices issued to them by respondent on 7-2-2014, Annexures-B & A respectively, documents sought for in their representations is required as otherwise petitioners would not be in a position to effectually defend their rights and petitioners would not be in a position to file effective statement of objections or reply to show cause notices. Hence, petitioners are seeking for a writ of mandamus to respondent to direct them to furnish the documents sought for. I have the heard the arguments of Sri Chandrashekar, learned counsel appearing for petitioners and Sri Jeevan J. Neeralgi, learned counsel appearing for respondent and since the prayer sought for, grounds urged and pleas advanced in support of their prayer and defence set up by respondent in both the writ petitions being common and identical, they are taken up together for consideration and disposed of by this common order.

2. It is the contention of Sri Chandrashekar, learned counsel appearing for petitioners that respondent without considering the representations submitted by

petitioners and without providing documents sought for in the said representations are attempting to proceed with the adjudication of show cause notices and show cause notices when read in its totality would indicate that statement of certain dealers said to have been given for having transacted with the petitioners are being made use of in the adjudication proceedings and if petitioners are kept in dark namely, not knowing as to what is the statement given by those dealers, who have appeared before the authorities, petitioners would be deprived of filing an effective reply to show cause notice or in other words, it amounts to violation of principles of natural justice. Hence, he prays for issuance of a direction as sought for in the writ petitions.

3. Per contra, Sri Jeevan J. Neeralgi, learned counsel appearing for respondent would contend that documents relied upon in the show cause notices issued to petitioners undisputedly has been furnished to petitioners and they have sought for extension of time to file reply to said show cause notices, which has also been granted and as such, documents now sought for in the representations is a ruse to protract the proceedings and as such he prays for present writ petitions being dismissed.

4. Having heard the learned Advocates appearing for parties and on perusal of case papers, it would indicate that on the intelligence gathered by the Officers of respondent there has been evasion of payment of applicable central excise duties by petitioners, show cause notices came to be issued to petitioners, which is a firm engaged in manufacturing of household plastic articles like buckets, tubs, basins, etc., falling under Chapter sub-heading No. 3926 40 39 and certain other goods manufactured falling under Chapter sub-heading No. 9403 70 00 of Central Excise Tariff Act and as such, show cause notices came to be issued to petitioner as to why said duty, interest and penalty should not be recovered, as specified in the show cause notices. Respondent has indicated in the show cause notices itself that same has been issued by relying upon the records/documents referred to thereunder.

5. Though Sri Chandrashekar, learned counsel appearing for petitioners had submitted on the previous date of hearing about non-receipt of documents referred to thereunder, today he has fairly submitted that three (3) volumes of documents has been furnished by respondent and same is referred to in the show cause notices in question. His submission is placed on record.

6. Perusal of representations submitted by petitioners would indicate that petitioners have sought for copy of entire order sheet, office notes, copies of summons issued to various constituents of petitioners and documents referred to in the seizure order dated 9-5-2013 and also information contained in CPU of VIP make computer with CD.

7. Sri Jeevan Neeralgi, learned counsel appearing for respondent during the course of his submission has made available the original acknowledgment duly signed by petitioners, whereunder petitioners have not only acknowledged the

receipt of show cause notices but also three (3) volumes of enclosures to the said show cause notices. In other words, documents referred to in the show cause notices in question has been furnished to petitioners. Concededly the documents which are now sought for by petitioners in their respective representations have not been relied upon in the show cause notices by respondent except seizure mahazar. In fact, documents referred in seizure mahazar has also been furnished to petitioners along with the documents in three (3) volumes and as such, this Court is of the considered view that question of issuing any writ of mandamus to respondent to furnish copies of documents to petitioners, as sought for in the respective representations, does not arise. Be that as it may. In the show cause notices in question respondent has clearly indicated that if there are any non-relied upon records which is required by petitioners it can be collected by the noticees namely, petitioners within 30 days of receipt of show cause notices. It is not the case of petitioners that documents which are indicated in the show cause notices have not been furnished to petitioners. It is also not their case that same has been relied upon by the respondent. Hence, for this reason also no direction can be issued to respondent. Hence, writ petitions stand dismissed as being devoid of merits. No costs.