(2013) 08 MP CK 0400

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6659 of 2013 DB/TM/DA-5

Taneja Iron and Steel Co. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2014) 306 ELT 245

Hon'ble Judges : S.R. Waghmare, J;P.K. Jaiswal, J

Bench : Division Bench

Judgement

1. Heard on merits as well as on I.A. No. 4475/2013 whereby preliminary objection has been raised by the respondents regarding maintainability of the writ petition. Brief facts of the case are that search was conducted by the department at the petitioners'' factory and seized certain excisable finished goods and after issuing show cause notice confiscated the seized goods under the provisions of Section 25 of the Central Excise Rules, 2002, which was seized by the department on 12-3-2010 under the provisions of Section 12 of the Central Excise Act, 1944 read with Section 110 of the Customs Act, 1962. The adjudicating authority gave an option to redeem the confiscated goods on payment of a fine of Rs. 50,00,000/-; and imposed a penalty of Rs. 10,00,000/- and Rs. 5,00,000/- upon the petitioners No. 1 & 2 under the provisions of Rules 25 and 26 of the Central Excise Rules, 2002.

2. Being aggrieved with the said order, the petitioner No. 1 has filed an appeal before the Commissioner (Appeals). The appellate authority by order dated 18-10-2012 upheld confiscation of the finished goods valued at Rs. 2,45,30,779/- and set aside the confiscation of the semi-finished goods (auto leaf) valued at Rs. 31,28,073/- and reduced the redemption fine to Rs. 30,00,000/- from Rs. 50,00,000/-. The penalties of Rs. 10,00,000/- and Rs. 5,00,000/- imposed on petitioner No. 1 and petitioner No. 2 were upheld.

3. The petitioners challenged the said order of the appellate authority by filing appeal before appellate tribunal u/s 35B of the Central Excise Act, 1944. They

also filed an application u/s 35F of the Central Excise Act, 1944 for dispensation of pre-deposit of fine and penalty (Rs. 10,00,000/- & Rs. 30,00,000/-). In the application, it is stated that no allegation of excess stock can be made. They submitted before the adjudicating officer, specifically that if still department wished to proceed on the basis of the panchnama, the petitioner should be allowed to cross-examine the panchas, who were present at the time of stock verification on 10-3-2010 and also those panchas, who were present on panchnama proceeding dated 12-3-2010. It is also alleged that the cross-examination is necessary as in both the panchnamas different panchas were present and they placed reliance on the decision of CESTAT in the case of 1987 (29) ELT 151 . The petitioners also relied on number of decisions cited in para 25 of the said application.

4. The learned appellate tribunal by order dated 18-3-2013 rejected the application by holding that no case for grant of stay is made out.

5. Order dated 18-3-2013 (Annexure P/6) read as under :-

The Order-in-Original and the Order-in-Appeal, the latter being the subject matter of substantive appeals, do not prima facie appear to be vitiated either by procedural or substantive error susceptible to appellate reversal. In the circumstances, no case is made out for grant of stay. Hence, the applications are dismissed.

6. It is submitted by learned counsel for the petitioners that in view of the various judgments of the appellate tribunal they have a strong prima facie case and, therefore, insistence of pre-deposit of such huge amount of penalties would cause undue hardship to the petitioners and is contrary to the principles/ratio of the judgment of the Apex Court as well as the High Court. The sole contention of the learned counsel for the petitioners is that impugned order dated 18-3-2013 is a non-speaking order. No reason has been assigned by the learned appellate Tribunal. He submitted that the basic rule of natural justice requires recording of reasons in support of the order. The order has to be explanatory and should not keep the higher Court guessing for reasons. With the aforesaid, it is submitted that the impugned order is in violation of principles of natural justice.

7. Reasons provide live link between conclusions and evidence that vital link in a safeguard against arbitrariness, passion and prejudice. It is a tool for judging the validity of the order under challenge. It gives opportunity to the higher court to see whether or not the adjudicatory was processed on the relevant consideration, material and evidence.

8. Giving of reasons in any order is a part of natural justice, which provides that every decision must contain reasons for the decision. Reasons may be elaborate or may be brief. But these are considered necessary to ensure fair decision making.

9. On the other hand, learned counsel for the respondents has submitted that

the impugned order is appealable u/s 35G of the Central Excise Act, 1944 and prayed for dismissal of the writ petition. In support of the said contention, he placed reliance on the decision of Bombay High Court in the cases of Indoworth India Ltd. Vs. Customs, Excise and Service Tax Appellate Tribunal and Commissioner of Customs and Central Excise, , Commissioner of Cus. and C. Ex. Vs. Rana Sugar Ltd., Anil Kumar Didwania Vs. Collector of Customs, Guru Ispat Ltd. Vs. Joint Director General of Foreign Trade, , Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another, , Union of India (UOI) Vs. East and West Shipping Agency, , Cicily Kallarackal Vs. Vehicle Factory, Auram Jewellery Export (P) Ltd. Vs. Union of India (UOI), and Dr. S. Panneerselvam Vs. The Assistant Commissioner of Income Tax and Income Tax Appellate Tribunal (B Bench), . Placing reliance on the aforesaid decisions, learned counsel for the respondents submitted that IA. No. 4475/2013 be allowed and writ petition be dismissed as not maintainable.

10. In reply, Shri Sumit Nema, learned counsel for the petitioner has submitted that, all these decisions have been considered by the Madras High Court and after appreciating the aforesaid judgments the matter has been referred to the Larger Bench for consideration whether writ petition is maintainable or not. He also placed the reliance on the decision of the Larger Bench of the Apex Court in the case of The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others, wherein it has been held that not only administrative but also judicial order must be supported by the reasons recorded in it. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. The recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. Similar is the view taken by the Single Bench of this Court in the case of Sidhartha Tubes Ltd. Vs. Union of India (UOI), Allahabad High Court in the case of Shamken Cotsyn Limited Vs. Commissioner (Appeals), C. Ex., Calcutta High Court in the case of Hooghly Mills Company Limited Vs. Union of India (UOI), another decision of. M.P. High Court in the case of Omega Alloy Castings Pvt. Ltd. Vs. Commissioner (Appl.), C. Ex., and Kishori Pujari Granite Pvt. Ltd. Vs. Union of India (UOI), wherein, the various High Courts have held that mechanical dismissal of the appeal by order of simpliciter on that ground is improper and so is a telegraphic order rejecting stay application not considering the two aspects in detail No. (1)-Whether the petitioner therein has been able to make out a prima facie case? (2) Whether the petitioner is going to suffer undue hardship or not ?

11. With the aforesaid, it is submitted that the impugned order be quashed as the same is in violation to the principles of natural justice and matter be remitted to the appellate tribunal to decide the question whether the petitioners have been able to make out a prima facie case? and whether they are going to suffer undue hardship or not ? afresh.

12. In respect of the question of maintainability of petition, it is not in dispute

that no reason has been recorded by the appellate tribunal while deciding the application for waiver of pre-deposit/grant of stay and, therefore, the same has been in violation of principles of natural justice. In view of the law laid down by the Apex Court in the case of DCM Financial Services Ltd. Vs. J.N. Sareen and Another, and also to the fact that the decision cited by the learned counsel for the department has been considered by the Madras High Court and the question has been referred to the Larger Bench and the issue is pending before the Larger Bench, we are of the view that the writ petition filed by the petitioner is maintainable. IA. No. 4475/2013 is accordingly, rejected. It is true that deposit of money demanded by the respondents is a condition precedent as per Section 35F of the Act. However, the same can be waived or dispensed with only if deposit of the money is going to cause undue hardship to such a person and a prima facie case has been made out.

13. Submission of the respondents is that in case the petitioner was not successful in establishing the prima facie case in their favour. Considering the totality of the facts and circumstances of the case and on due appreciation of enunciation of law as laid down in the judgment referred to, we are of the considered view that the Tribunal, which is discharging function, is expected to pass a reasoned and detailed order.

14. In view of the aforesaid, impugned order dated 18-3-2013 is quashed. The matter is therefore, remanded back to the appellate tribunal for considering the petitioner''s application afresh on merit and then to pass a detailed order about the prima facie case of the petitioners as also about undue hardship that the petitioners may suffer, if stay is not granted. It is also expected that the appellate tribunal shall decide the application filed u/s 35 of the Act, as expeditiously as possible. With the aforesaid, the writ petition is allowed and disposed of finally with no orders as to costs.

