(2010) 07 AP CK 0126

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16170 of 2010

Vasavi Business Combines APPELLANT

Vs

Commissioner of Customs, Central Excise and Service Tax RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Finance Act, 1994 — Section 68
Service Tax Act — Section 6

Citation : (2011) 39 VST 584

Hon'ble Judges : V.V.S. Rao, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : Senior Counsel, for the Respondent

Judgement

V.V.S. Rao, J.—The Petitioner is a firm engaged in buying, processing, marketing and, statedly, exporting tobacco. In the course of its business, allegedly, it also accepts job-works for other tobacco companies like M/s. Ethnic Tobacco (P) Limited, M/s. Sharat Tobacco Company and M/s. Chaitanya Tobacco Company, especially, with regard to two important operations in the process of tobacco, namely, "threshing and redrying". On an allegation that the Petitioner failed to pay the service tax for the assessment year 2006-07 the Respondent, based on intelligence gathered, conducted enquiry after duly summoning the partner of the Petitioner and other companies who allegedly availed of services from the Petitioner. After such preliminary enquiry, having come to a provisional conclusion that the Petitioner contravened Section 68 of the Finance Act, 1994, read with Section 6 of the Service Tax Rules, 1994, the Respondent issued a show-cause notice impugned herein ; calling upon the Petitioner to explain as to why action proposed thereunder should not be taken against them. The Petitioner is yet to file their explanation.

2. This Court adjourned the matter on July 12, 2010. The learned senior standing counsel for the Respondent filed counter-affidavit and also placed necessary

material. The core submission in opposing the writ petition is that having regard to the fact that the impugned order is only a show-cause notice, a writ petition would not lie. We find much force in the submission.

3. In State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, the Supreme Court held:

The High Court was not justified in quashing the show-cause notice. When a show-cause notice is issued to a Government servant under a statutory provision calling upon him to show cause, ordinarily the Government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show-cause notice is to afford opportunity of hearing to the Government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show-cause notice.

(emphasis supplied)

4. In Union of India (UOI) Vs. Bajaj Tempo Limited and Others, the Supreme Court laid down as under:

...The appropriate course for the Assessee in each case was to reply to the show-cause notice enabling the authorities to record their findings of fact in each case and then if necessary, the matter should have been proceeded to the Tribunal and thereafter to this Court. The trade notice was not decisive of the question either before the Tribunal or in this Court.

We are satisfied that the question of excise duty which has been raised in these matters can be decided only after recording the findings of fact in each case in respect of goods or items given by the appropriate authority.

These matters must, therefore, go back to the Assistant Collector for decision of questions of fact. It would be open to the Assessee in each case to submit its reply to the adjudicating authority within four weeks. The adjudicating authority would then proceed to decide the same in accordance with law. The further remedy thereafter would be available to the aggrieved party in accordance with law. These appeals are allowed in the manner indicated above.

5. In The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, the Special Director, Enforcement Directorate, issued a notice to Respondents No. 1 therein. Assailing which, a writ petition was filed in Bombay High Court. The High Court ordered status qua, which virtually stalled all the proceedings. In appeal before the Supreme Court it was urged that when show-cause notice issued is clearly illegal, the High Court is justified in entertaining the writ petition. The Supreme Court negatived this submission and laid down as under:

This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ Petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved court approach the court....

6. In Commissioner of Customs and Central Excise and Others Vs. Charminar Nonwovens Ltd., the Supreme Court observed as under (at page 358 in 136 STC):

The matter relating to commodity classification, whether it falls under one heading or the other or attracts higher or lower duty has to be decided on facts arising in each case. Even though, the decision may have been taken earlier at one point of time but on further investigation new facts are discovered or the law has changed, as is the stand in the present case, the matter has to be re-examined. It is not at all proper for the High Court to interfere in such matters at the stage of issue of the show-cause notice. We, therefore, set aside the order made by the High Court and remit the matter to the concerned authority for adjudication. It shall be open to the Respondent to file reply to the show-cause notice as they deem fit, if not already filed within a period of one month from today or such further time as may be allowed by the adjudicating authority. We direct the adjudicating authority to dispose of the matter thereafter in accordance with law.

7. The High Court of Madras in Medopharam Vs. Superintendent of Central Excise, Madras, held as under:

...In the writ petition, the Petitioner/Appellant has challenged the show-cause notice. The learned single judge has gone into the merits of the case and dismissed the writ petition. We are of the view that whenever a show-cause notice is issued under the provisions of the Central Excises and Salt Act, which provides for adjudicatory forum and also right of first appeal to the Collector and second appeal to the CEGAT, exercise of jurisdiction under Article 226 of the Constitution is not warranted. In such cases, the exercise of jurisdiction under Article 226 would amount to by-passing the statutory remedy provided under the Central Excises and Salt Act, which is not just and proper....

8. In view of the binding authority, we are not inclined to entertain the writ petition at this stage. It is always open to the Petitioner to submit explanation and to participate in the adjudication by the Respondent. By reason of the show-

cause notice the Petitioner was required to submit explanation within thirty days from the date of receipt of the impugned notice dated April 1, 2010. Keeping in view the principle of fairness, we deem it proper to extend the time by another six weeks from today for the Petitioner to submit explanation. If the Petitioner fails to submit explanation within the time now granted, it shall be open to, the Respondent to adjudicate the matter and pass orders in accordance with law.

9. The write petition stands disposed of accordingly. There shall be no order as to costs.

