(2015) 03 MAD CK 0643

In the Madras High Court

Case No : Writ Petition No. 6995 of 2015

Vodafone Cellular Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 33A(1)

Citation : (2015) 323 ELT 81

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : Satish Parasaran, for the Appellant; A.P. Srinivas, Advocates for the Respondent

Judgement

S. Vaidyanathan, J—The Writ Petitioner has come forward with the aforesaid prayer, challenging the order of the 2nd respondent. The only issue raised by the learned counsel for the petitioner is that they were not given opportunity of hearing before the final order dated 26-12-2014 was passed by the second respondent in terms of the provisions of Section 33A(1) and (2) of the Central Excise Act, 1944. In other words, before passing an adjudication order, the Adjudicating Authority shall grant time to the licensee and adjourn the hearing for reasons to be recorded in writing, however, the party to such proceeding shall not be granted more than three times during the proceeding. Therefore, according to the learned counsel for the petitioner, the impugned order is per se in violation of the principles of natural justice and the mandatory procedure contemplated under 33A(1) and (2) of the Act.

2. On the other hand, the learned Additional Government Pleader would contend that the petitioner has been given adequate opportunity to defend the proceedings initiated against him and therefore, it cannot be said that the impugned proceedings are in violation of the principles of natural justice. It is also contended that the Act merely contemplates affording an opportunity to the assessee and it is not a mandatory condition to be followed by the Adjudicating

Authority. Therefore, the proceedings of the second respondent, which is impugned in this writ petition, does not call for any interference by this Court and he prayed for dismissing the writ petition.

3. I heard the counsel for both sides. Before dealing with the rival submissions made by the counsel for both sides, it is necessary to look into Section 33A(1) and (2) of the Act, which is extracted below:

"33A. Adjudication procedure.--

(1) The Adjudicating Authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The Adjudicating Authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding."

4. It is seen from the records that on 15-2-2013, the officials of the Directorate General of Central Excise Intelligence conducted a search in the premises of the petitioner. During the course of such search, they have recorded the statement of the officials in charge of the petitioner company. On the basis of the information gathered during such search, a cause notice dated 31-3-2014 was issued by the Additional Director General, Directorate General of Central Excise to the petitioner. The said show cause notice dated 31-3-2014 would indicate that the petitioner was called upon to submit their objections within 30 days from the date of receipt of the show cause notice, or if already they have submitted their explanation, they were directed to appear before the said authority on the appointed date and time, else, their case will be decided on the basis of the available records and evidence. On receipt of the notice dated 31-3-2014, the petitioner submitted their detailed explanation on 16-6-2014. In the explanation, it was stated by the petitioner that the notice dated 31-3-2014 was received by them only on 10th April 2014. It was replied that in the absence of any proof for suppression of facts or payment of service tax was evaded with a mala fide intention, the question of levying penalty does not arise. Ultimately, the petitioner sought for a personal hearing to further represent their case and to adduce any other evidence, as may be required. On receipt of such explanation dated 16-6-2014 of the petitioner, the second respondent, by a communication dated 14-11-2014, asked the petitioner to appear before the Commissionerate for an enquiry on any of the dates given thereunder namely 28-11-2014, 11-12-2014 or 18-12-2014 in person or through their authorised representative. The petitioner, thereafter, by a communication dated 18-12-2014, informed the respondent that their legal team is travelling out of the country on 18-12-2014 and requested to have the personal hearing on any date after 15th January 2015

as may be convenient to the respondent. However, without granting any time for such personal hearing, the second respondent proceeded to pass the final order on 26-12-2014. A reading of Section 33A(1) and (2) of the Central Excise Act together would make the position very clear that affording an opportunity of hearing to the licensee is mandatory else it would defeat the very purpose of the Act. In this case the petitioner has produced documents along with their objection dated 18-12-2014 and sought time to appear for personal hearing. Pursuant thereto, by a communication dated 14-11-2014, the second respondent called upon the petitioner to appear on any of the three days mentioned therein. On receipt of the same, the petitioner, by a letter dated 18-12-2014 requested the second respondent to have the personal hearing on any date after 15-1-2015. However, such request made by the petitioner has not been considered by the second respondent. In other words, the petitioner was not given an opportunity of hearing at all as contemplated under Section 33A(1) and (2) of the Act, which is mandatory. The second respondent ought to have considered the claim of the petitioner to have the personal hearing after 15th January 2015 or fixed any other date other than the one sought for by the petitioner. The second respondent, without doing so, has passed the final order of adjudication on 26-12-2014 which is in contravention to the principles of natural justice. Therefore, the impugned order is set aside. The writ petition is allowed. No costs. However, taking into consideration the facts and circumstance of the case, the petitioner is directed to deposit 2.5% of the tax liability demanded by the respondents, without prejudice to their right, within a period of four weeks from the date of receipt of a copy of this order. The petitioner is further directed to appear before the second respondent on 20-4-2015 on which date, the petitioner shall produce all the documentary evidence in support of their claim. The second respondent is directed to consider the documentary evidence that may be produced by the petitioner on 20-4-2015 and thereafter pass order on merits and in accordance with law. Connected miscellaneous petitions are closed.