

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.04.2010

+ **W.P.(C) 1677/2010**

S.C.RAHI

..... Petitioner

- versus -

UNION OF INDIA & ANOTHER

..... Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr C. Hari Shankar with Mr S. Sunil

For the Respondent No.1 : Mr Asit Tiwari

For the Respondents 2 & 3 : Mr Mukesh Anand with Mr R. C. S. Bhadoria,
Mr Shailesh Tiwari and Mr Sumit Batra

AND

+ **WP(C) 1112/2010 & WP(C) 2303/2010**

S. L. BANSAL

..... Petitioner

versus

UNION OF INDIA & OTHERS

..... Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr Tarun Gulati with Mr Neil Hilderth

For the Respondent No.1 : Mr Roshan Lal Goel

For the Respondents 2 & 3 : Mr Mukesh Anand with Mr R. C. S. Bhadoria,
Mr Shailesh Tiwari and Mr Sumit Batra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. In these writ petitions, which raise common issues, the petitioners seek the quashing of the orders-in-original dated 18.12.2009 and 29.12.2009 passed by the Commissioner of Central Excise (Adjudication)

insofar as it operates against them. A prayer has also been made seeking a direction restraining the respondents from taking any coercive action against the petitioners pursuant to the impugned orders-in-original dated 18.12.2009 and 29.12.2009.

2. The sequence of events leading up to the filing of the writ petitions began with the issuance of show cause notices to several exporters as well as to the present petitioners, who are officers of the Central Excise and Customs Departments. Certain other officials of the said departments were also issued show cause notices and they have also filed writ petitions but their case is somewhat different and, therefore, we are only dealing with the present two officials, namely, Mr S. C. Rahi and Mr S. L. Bansal. The former has filed WP(C) No. 1677/2010 and the latter (Mr S. L. Bansal) has filed WP(C) No. 1112/2010 and WP(C) No. 2303/2010. Both these officials were alleged to be involved in the activities concerning two exporters, namely, Buildex Metals and National Steel Products Company Limited.

3. The said show cause notices were adjudicated by the Commissioner of Central Excise (Adjudication) by separate orders-in-original passed on 30.10.2006.

4. Thereafter, the exporters, namely, Buildex Metals and National Steel Products Company Limited as well as several other exporters filed appeals before the Central Excise and Service Tax Appellate Tribunal in respect of the said orders-in-original. The revenue, however, did not file

any appeal in respect of the orders-in-original pertaining to Buildex Metals and National Steel Products Company Limited. There were allegations against both the officials, namely, Mr S. C. Rahi and Mr S. L. Bansal in the show cause notices issued to them. However, in the orders-in-original referred to above, both these officials have been exonerated and no penalty was levied on them. Thus, the position is clear that insofar as the petitioners— Mr S. C. Rahi and Mr S. L. Bansal — are concerned, no appeal was filed by the revenue in respect of them nor was any appeal filed by the revenue in respect of Buildex Metals or National Steel Products Company Limited in connection with which, notices have been issued to the petitioners. However, Buildex Metals and National Steel Products Company Limited had preferred appeals against the orders-in-original of 2006 before the Tribunal. The present petitioners were, however, not made parties to those appeals inasmuch as Buildex Metals and National Steel Products Company Limited were not at all concerned with the order of exoneration of the present petitioners, namely, Mr S. C. Rahi and Mr S. L. Bansal. This is an admitted position.

5. However, in the appeals filed by the exporters including Buildex Metals and National Steel Products Company Limited as well as some other appeals filed by the revenue, the Tribunal, after hearing the parties thereto, set aside all the orders-in-original dated 30.10.2006 and remanded the matters for *de novo* consideration by the Commissioner of Central Excise (Adjudication). Subsequent thereto, the Commissioner of Central Excise (Adjudication) passed fresh orders-in-original on 18.12.2009 and

29.12.2009. This time, however, a penalty of Rs 1 lac was imposed on Mr S. C. Rahi and a penalty of Rs 2 lacs, in two of the cases, was imposed on Mr S. L. Bansal.

6. The grievance of the petitioners is that there was no matter pending before the Tribunal pertaining to the present petitioners when the order of remand was made. Therefore, there was no question of their case being re-considered by the Commissioner of Central Excise (Adjudication), when he conducted his *de novo* adjudication. Consequently, no penalty could have been imposed on the petitioners. The learned counsel for the petitioners also submit that the department had accepted the finding of the Commissioner of Central Excise in the first round whereby both the petitioners had been exonerated. The department had consciously decided not to prefer any appeal and, therefore, no appeals were filed against the first round of orders-in-original insofar as the present petitioners are concerned.

7. We have heard the counsel for the parties and are of the view that the submissions made by the petitioners ought to be accepted. The reason for this is very simple. The petitioners were not parties before the Tribunal when the order of remand was passed by the Tribunal. They were neither made parties by the exporters nor by the revenue and there was no question of the petitioners having filed any appeal because they had already been exonerated by the Commissioner of Central Excise (Adjudication). Therefore, the order passed by the Tribunal, whereby the matter was

remanded for *de novo* consideration, could not, in any event, affect the petitioners in any way. The petitioners had specifically brought to the notice of the Commissioner of Central Excise (Adjudication) in the course of the *de novo* proceedings that no proceedings could be taken up against the petitioners in view of the fact that they were not parties before the Tribunal and that in any event, the earlier orders-in-original, insofar as the petitioners were concerned, had already been accepted by the department. Despite this, the Commissioner of Central Excise (Adjudication), in the second round of adjudication, imposed penalties on both the petitioners. We are of the view that this could not have been done in the facts and circumstances of the case. The remand by the Tribunal did not relate to these petitioners as they were not parties before the Tribunal.

8. As a consequence, the impugned orders-in-original dated 18.12.2009 and 29.12.2009 are set aside to the extent they relate to the petitioners. The writ petitions are allowed to this extent. The parties shall bear their own respective costs.

The writ petitions stand disposed of.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 26, 2010
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