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..... Petitioners

..... Respondents

Department of Revenue, Central Board of Excise & Customs. It is contended that the petitioners furnished information to one Shri Rajesh Tomar, the then Superintendent (Central Excise (Anti Evasion Branch) in the Central Excise Commissionerate, Delhi-II, relating to duty evasion by M/s JV Industries which eventually led to the search and seizure operation at the premises of that concern on 19.12.2007. The petitioners submit that they claimed, by a letter dated 17.07.2008, the reward on account of the information furnished by them being useful to the Department.

3. In the pleadings it is contended that written information was provided by the petitioner: a translation of the petitioner's letter dated 12.11.2007 has been annexed to the pleadings. It is alleged that on 27.08.2008, the petitioner received a letter from the Assistant Commissioner stating that no interim reward could be paid in terms of the prevailing policy. The petitioners rely upon several letters and representations- including an appeal filed in this regard. They also relied upon the responses submitted by the Central Excise Authorities, in response to the queries made under the Right to Information Act, 2005 (RTI), at two separate and distinct points of time. During the course of pleadings, it was *inter alia*, averred that

“after receiving the above letter, Petitioners went to the office of the Respondent No.5 from where they were informed that Shri Rajesh Tomar was already transferred and on phone Shri Tomar instructed the petitioners to remain in contact with Shri J.P. Singh, who had already given his mind to the Petitioners that nothing fruitful will be achieved by writing letters and that they should follow his instructions. As the terms of the said Shri Singh for giving blank Cheque-book duly signed by the Petitioners, was not acceptable as the same amounted to an unethical approach in the matter, they

continued to follow up the matter with the appropriate authority of the Deptt. as mentioned in the succeeding paragraph.”

4. In the counter affidavit, the respondents contend that there is no vested or entrenched right to claim a reward. Para 5 of the 2001 policy relied upon by the petitioner, it is argued, clarifies that grant of *ex-gratia* payment is a matter of discretion and cannot be claimed as a right. It is also contended that till final adjudication the rights, if at all, of such parties who claimed rewards are inchoate and Para 6.3 of the 2001 policy at best enable the Excise Authorities to consider payment of such amounts as may be deemed appropriate as interim or advance reward provided the concerned parties admits to their liability. It was submitted that even though in this case, the assessee JV Industries deposited ₹ 4.40 crores, nevertheless it chose to contest the matter and its appeal is pending before the Customs Excise and Service Tax Appellate Tribunal. As to the allegation about how the information or intelligence was derived or secured, the respondent averred as follows:-

“Para 3 (VII) of the writ petition, as stated is wrong and denied. However, it is submitted that there was no Inspector by the name of Sh. J.P. Singh posted in the Anti Evasion branch of Central Excise, Delhi-II, Commissionerate at that time. Therefore, the contention of the applicant that he was asked by Sh. Rajesh Tomar to meet Sh. J.P. Singh Inspector are not correct and no such discussion is available in the record of case file.”

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Para 3 (XVII) of the writ petition is wrong and denied. However it is submitted that the show cause notice to the party was issued only after the detailed investigation conducted against the party. The information provided by the informer, if any, was just a

basic information and it could not be co-related with the investigations or show cause notice issued by the department.”

5. Apart from reiterating the submissions made in the grounds and placing reliance on the terms of 2001 Policy as reiterated in 2004, learned counsel for the petitioner pointed out the reply given sometime in 2010 by the respondent to the queries made under the RTI. The relevant extract of the said reply how the raid was conducted, the basis and subsequent assessment of JV industries was carried out is apparent from the following extract:-

“Working on a basic information that the unit M/s J.V. Industries Pvt. Ltd., Delhi is engaged in the manufacturing of Copper Ingots, Copper Rods & Copper Wires and showing usage of Nickel as an input which was not being used in the manufacture of their final product. The information was developed by S.I.O. with assistance of I.O. and some more documents were gathered to verify the authenticity of the basic information. Accordingly, a strategy was planned as to how this information is to be carried forward to verify the facts. As the issue of avilment of Cenvat was of the previous years and based on documentation which were pre-planned by the manufacturer as such the investigation was planned to be carried out in three stages namely—

- (i) Sourcing – Import/Purchase of Nickel,*
- (ii) Manufacturing So called Copper Nickel Alloys Ingots &*
- (iii) Post manufacturing Sale & Testing of Copper Nickel Ingots*

They were also involved in the clandestine removal of goods without payment of Central Excise duty. The excess finished goods and the semi finished goods valued at Rs.3.60 Crore were seized under Rule 24 of the Central Excise Rules, 2002 during the time of visit on 19.12.2007.

After comprehensive investigations in which 62 statements has been recorded under Section 14 of the Central Excise Act, 1944

till date and various searches conducted in follow up so far it has revealed that the unit had fraudulently availed the Cenvat Credit, since the unit does not have logistics to consume the same in the manufacturing of the final product and during the course of investigation conducted till date it has come to notice that the unit does not have the facility to use the Nickel in the production of “so-called Copper Nickel Alloy Ingots” but also the Electrolytic Nickel Cathode, Nickel Cathode FSC was not brought into their factory which was supposedly sold to M/s J.V. Industries Pvt. Ltd. By various Importers/Dealers on High Seas Sales basis. The party had availed Cenvat Credit to the tune of Rs.4.37 crore on Nickel during the year 2005-06 & 2006-07 and they were showing the production of so-called Copper Nickel Alloys Ingots in their records. Further investigations also revealed that Nickel was not even received in their factory premises and that they have not produced Copper Nickel Alloy Ingots at all. They were manufacturing Copper Ingots out of copper scrap and they were showing the production of Copper Nickel Alloy Ingots in their records just to show the consumption of Nickel.”

6. It was submitted that likewise, the reply to the RTI query given in March, 2010 belies the respondents’ contention with respect to furnishing of information to Shri J. P. Singh, the Inspector. The learned counsel emphasised that whereas in the reply the respondents denied the role of Shri J. P. Singh altogether stating that no such officer was there in Anti-Evasion Department, the RTI reply clearly brought out the fact that information was given to Shri J. P. Singh who inturn passed it on to Shri Rajesh Tomar and Shri Pankaj Kudeshiya who were instrumental in carrying on further investigation.

7. The learned counsel for the revenue urges that this Court should not interfere with the determination of the respondents especially in view of the

Minutes of Meeting dated 04.06.2009 attended by an Additional Commissioner and two Assistant Commissioners who had examined the entire record. It was submitted that this view was reiterated in the subsequent Minutes of Meeting dated 22.06.2009 when the authorities were satisfied that the circumstances of the case did not warrant the release of any interim Reward. It was emphasised that the identity of the person, i.e. as to who was the informer could not be established- as is evident from the first Minutes of Meeting dated 04.06.2009.

8. It was urged by learned counsel for the revenue that even though the counter affidavit gave the impression that Mr J. P. Singh was not involved, the fact remains that he was not posted in the Anti Evasion Department at the relevant time. Reiterating that the information provided in this case by the petitioners was neither significant nor material, learned counsel sought to rely upon the original record to say that as far back in September, 2007 itself the Central Excise Authorities had issued notices eliciting specific information and calling for documents relating to the sister concerns of JV Industries. It was stressed that in order to qualify for any entitlement, to reward, the material or information should be significant and not of a general nature which even otherwise the Central Excise Authorities can gather in the course of their routine activities.

9. The learned counsel argued that the nature of discretion vested in Paras 5 and 6.3 of the 2001 Policy is entirely dependent upon exercise of discretion by the concerned authority, which in this case was a Committee. He also relied upon a judgment of the Bombay High Court reported as *Mr. X*

v. *DGCEI, Mumbai*: 2012(282) E.L.T. 363 and the judgment of the Supreme Court in *Union of India v. C. Krishna Reddy*: 2004 (163) E.L.T. 4(SC).

10. For facility of reference, the relevant provisions of the 20.06.2001 circular are extracted below:-

“2. Scope of the Reward Guidelines

2.1 These guidelines will be applicable for grant of rewards to the informers and Government servants in respect of cases of seizures made and/or infringements /evasion of duty, etc., detected, under the provisions of the following Acts:-

- (1) The Customs Act, 1962;*
- (2) The Central Excise Act, 1944;*
- (3) The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.*

2.2 These guidelines will also be applicable for grant of rewards in respect of cases of detection of Drawback frauds or abuses of duty exemption schemes such as DEEC, DEPB, EPCG, etc., unearthed on the basis of specific prior information.

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5. Reward should not be granted as a matter of routine

5.1 Reward is purely an ex gratia payment which, subject to guidelines, may be granted on the absolute discretion of the authority competent to grant rewards and cannot be claimed by anyone as a matter of right. In determining the reward which may be granted, the authority competent to grant reward will keep in mind the specificity and accuracy of the information, the risk and trouble undertaken, the extent and nature of the help rendered by the informer, whether information gives clues to persons involved in smuggling, or their associates etc., the risk involved for the Government servants in working out the case, the difficulty in securing the information, the extent to which the vigilance of the staff led to the seizure, special initiative, efforts and ingenuity displayed, etc. and whether, besides the seizure of

contraband goods, the owners/organizers/financiers/racketeers as well as the carriers have been apprehended or not.

5.2 Reward should not be sanctioned for routine and normal nature of work.

6. Payment of Advance/ Interim Reward

6.1 Advance/Interim reward may be paid to informers and Government servants up to 50% of the total admissible reward immediately on seizure in respect of the following categories of goods, namely :-

- (a) gold/ silver bullion;*
- (b) arms and ammunition, explosives; and*
- (c) opium and other narcotic drugs.*

6.2 In others cases of outright, smuggling, involving seizures of contraband goods, including foreign currency, advance/interim reward up to 25% of the total admissible reward may be paid to the informers and Government servants, immediately after seizure, if the authority competent to sanction reward is satisfied that the goods seized are reasonably expected to be confiscated on adjudication and the adjudication order is likely to be sustained in appeal/ revision proceedings.

6.3 In all other cases, including Customs appraising cases, cases of town-seizures and Central Excise duty evasion cases, normally, no advance/ interim reward will be granted. However, in cases where the parties/persons, involved have voluntarily paid the amount of duty evaded during the course of investigation, admitting their liability, 25% of the voluntary deposits may be considered for payment as advance/ interim reward to the informers, after the issue of the show cause notice (SCN), provided the authority competent to sanction reward is satisfied that there is reasonable chance of confiscability/ infringement/ evasion, as the case may, being established in adjudication and sustained in appeal/revisionary proceedings. However, in such cases, the Government servants will become eligible for payment of advance interim reward only after adjudication of show cause notice resulting in confirmation of duty.

6.4 In exceptional cases, the Heads of Department, may having regard to the value of the seizures effected and magnitude of the evasion of duty/infringement detected and special efforts or ingenuity displayed by the officers concerned, sanction suitable reward on the spot to be adjusted against the advance/interim reward that may be sanctioned subsequently.

7. Payment of Final Reward

7.1 Final rewards, both to officers as well as informers, should be sanctioned and disbursed only after conclusion of adjudication/appeal/revisions proceedings. The final reward will be determined on the basis of the net sale proceeds of goods seized/confiscated (if any) and/or the amount of additional duty/fraudulently claimed Drawback recovered plus penalty/fine recovered, and the total reward admissible, i.e., advance and final reward put together, will not exceed the ceiling of 20% of the net sale proceeds (if any) plus amount of additional duty/fine/penalty recovered or the amount of drawback fraudulently claimed recovered, as the case may be. This will also be subject to instruction in para 4.3 above as regards rewards to Government servants is concerned. The advance/interim reward sanctioned and disbursed, if any, shall be adjusted from the final reward to be paid to the officers/informers.”

11. An analysis of the Policy would reveal that it consolidates existing practices and policies prevailing in the three departments and outlined the eligibility for granting rewards to informants. Para 4 deals with the quantum and ceiling of rewards; Para 5.1 importantly states that reward is purely an *ex gratia* payment, which is dependent on guidelines and can be granted at the absolute discretion of the authority competent to do so. Para 6.3 which the Court is concerned with in this case, especially in this case, provides the authorities with the power to release part of the admitted liability and which has been voluntarily paid, as interim Award to the informers after issuance

of show cause notice to the assessee. There is no doubt in this case that a show cause notice was issued; equally there may be no dispute that the overriding conditions i.e. para 5 and para 6.3 itself state that grant of reward is dependent upon exercise of discretion. The question, therefore, is whether in the given circumstances having regard to the pleadings and the materials on the record and made available to the Court, the exercise of discretion in refusing the Interim reward was justified.

12. As adverted to previously, in the pleading, the petitioners had urged before the Court that information was provided on 12.11.2007. That information apparently was kept in a sealed cover marked as AE-I-evident from the minutes of meeting of the respondents dated 04.06.2009 and later reiterated on 22.06.2009. These two Minutes of Meeting clarified that the respondent authorities were not satisfied as to who was the informer. The said documents equally show that the officers concerned did not open the sealed envelope on either date. For this purpose, the Court had directed the production of the sealed envelope. The seal was removed; when opened the information provided by the petitioner, in writing, contained in the envelope, in Hindi along-with an undertaking bearing thumb impression were found - copies thereof were placed on record and sealed cover returned. The question, therefore, of identity of the informer, in the opinion of this Court, at least at this stage cannot arise because what was found in the sealed envelope corresponds entirely with the translation of the document placed on record along with the Writ petition as Annexure P-2.

13. The question then is, were the respondents right in rejecting the petitioners claim for interim Reward altogether. The second question is

whether given the circumstances of this case, were the respondents correct in arguing that what was provided was only ‘*basic information*’ which disentitled the petitioner for any relief under the Reward Policy of 2001. Whilst, this Court cannot obviously enter into the arena of what kind of information would be useful as that would be a matter of executive Policy, at the same time what is apparent is that the petitioner provided certain vital link or information normally called a “tip off” which led to its ‘development’ and further investigation by the respondents authorities. This is evident from the reply to the RTI queries provided to the petitioner herself when the respondents stated that ‘working’ on a basic information that the unit of M/s JV Industries Pvt. Ltd was engaged in manufacturing copper Ingots, Copper Rods & Copper Wires and showing usage of nickel as an input which was not being used in the manufacture of their final product. The information was developed by SIO with the assistance of IO and some more documents were called for to verify the authentication of the basic information. This has been further elaborated in the reply to the RTI queries where it was stated that the information was given to Shri J. P. Singh, Inspector, who “*Provided the input about the information to the officer at Sr. No. 5*” i.e. Rajesh Tomar and “*provided key-data to the officer at Sr. No.6*” i.e. Pankaj Kudeshiya and “*played a key role in arresting Shri Sushil Kumar Jain the prime accused. Attended to court related matters*”.

14. Likewise, Sl.No.5 reference to whom has been made is adverted as Rajesh Tomar, Superintendent who is said to have “*gathered and developed an information and later deployed the officers Shri Pankaj Kudeshiya and Shri B. M. with senior officers.*”

15. The pleadings in this case are clear that the petitioner provided what is characterised by the respondents themselves as 'basic information'. During the submissions, learned counsel had relied upon certain show cause notices sought to have been issued to JV Industries' sister concern to show that parallel line of investigation existed. Yet the proximity of the information provided by the petitioner on 12.11.2007 and the subsequent raid, which took place in December, 2007, in the opinion of this is Court decisive for a conclusion that the basic information provided in this case was also of a significant character. Therefore, it is held that the petitioners claim could not have been brushed aside in the manner that is sought to be urged by the respondents in the present case.

16. The above observations, however, are not dispositive of the entire proceedings. Given the nature of the discretion which the competent officials have under Rules 5 & 6.3 of the 2001 policy, all that can be said at this stage is that the denial of the petitioners' representation on the ground of her being unable to establish identity and that she had only provided basic information which was insufficient to generate Interim Reward is not sustainable in law. As to whether the respondents would in the light of this finding wish to grant Interim Reward during the pendency of CESTAT proceedings as they appear to have done in the case of their own officers or await the decision of the CESTAT, is left to the discretion of the authorities who shall after considering all the materials available on record, pass appropriate orders and communicate the same directly to the petitioner within four weeks from today.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

VIBHU BAKHRU, J

MAY 27, 2014
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