IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11642 of 2011

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Surinder Choudhary, S/O Late Phaguni Choudhary, resident of Village-Madhaul, P.O.- Motipur, Via-Tajpur, P.S.-Tajpur, Distt.-Samastipur

.... Petitioner.

Versus

1. The Union of India through the Secretary Department of Finance (Revenue) Custom & Central Excise, North Block, New Delhi.
2. The Chairman, Board of Custom and Central Excise, Department of Revenue, Government of India, North Block, New Delhi
3. The Commissioner of Custom and Central Excise, Noida B. 123, Sector V Noida U.P.
4. The Chief Commissioner of Custom and Central Excise, Revenue Building, Birchand Patel Marg, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sachida Nand Kishore Pd., Advocate

For the Respondent/s : Mrs. Nivedita Nirvikar

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL ORDER

18 12-01-2015 Heard learned counsel for the petitioner and the learned counsel appearing for the Custom and Central Excise Department.

The petitioner was an employee of Punjab Fibers Limited. While in service, he informed the authority of Central Excise Department that the employee Punjab Fibers Limited is indulging in evasion of excise duty by misrepresenting polyester /cutting, as cutting Yarn by resorting to quantification of polyester/cutting under parallel invoice in the guise of cutting yarn, as the date of duty from cutting yarn was 5%, whereas the Yarn, the rate of duty was 20%. He also alleged that the company was indulging in falsification of record. The information was provided along with the documentary evidence. On receipt of information, an investigation was carried out. The allegations made by the petitioner was entirely confirmed by the Adjudicating Authority vide order dated 30.03.2001. An appeal preferred by M/s Punjab Fiber Ltd. too was dismissed on 30.04.2002 by the Commissioner Adjudication, Central Excise, New Delhi. A further appeal was carried to CESTAT by the M/s Punjab Fiber Limited. The CESTAT vide order dated 12.02.2002 passed in A/221 of 02-NB dropped the entire duty demand against M/s Punjab Fibers Limited.

Aggrieved by the order of CESTAT, a Reference Application was filed by the Commissioner, Central Excise, Noida in the Delhi High Court, which was dismissed as withdrawn with liberty to file the same before the appropriate authority vide order dated 03.04.2003. Accordingly, the reference application was filed before the Allahabad High Court by the Commissioner, Central Excise, Noida, which was dismissed on the ground of limitation. An S.L.P. preferred by the Department in the Hon'ble Supreme Court, which was later converted into Civil Appeal No. 4647 of 2007 was also dismissed by order dated 14.02.2008. A Review Petition No. 690-693 of 2009 filed by the Department too was dismissed by the Hon'ble Supreme Court vide order dated 27.08.2009, both on the ground of delay as well as on merits.

As the Department lost the case against the M/s Punjab Fibers Ltd., no recovery of alleged excise duty could be made.

The petitioner filed representations dated 30.12.2006 and 19.01.2011 addressed to the Chairman of CBEC for payment of reward money in terms of para.3.1, 4.1 and 4.2 of Chapter XIX of Reward Rules and procedures.

According to the petitioner, he was entitled to reward up to 20% of the excise duty, fine along with penalty. The petitioner submits that during investigation, the value of excise duty sought to be obtained was Rs.1,17,13,520/- along with penalty of Rs. 1,17,13,520/-, as such he would be entitled 20% of the aforesaid amount along with Rs.50,000/- as legal expenses and Rs. 1 lac under the head other expenses and compensation.

It appears that initially the petitioner paid Rs.50,000/- on 06.07.1999 against Rs.6,85,000/- as advance reward money. As the respondents did not accede to his representation to make payment of Reward money, he moved this Court in C.W.J.C. No. 13321 of 2008. The writ petition was disposed of on 13.12.2010 with observation that if the petitioner files representation before the Chairman, Custom and Central Excise, Finance Ministry, New Delhi, he would dispose of his representation within two months. The petitioner filed his representation before the Chairman, Custom and Central Excise, Finance Ministry, New Delhi, which was disposed of on 11.02.2011 with a liberty to move before the appropriate Reward Sanctioning Authority. The Chairman, C.B.E.C. (Central Board of Excise Customs) observed that as per the reward policy as well as the instructions and guidelines, the quantum of such reward is to be considered by the appropriate reward sanctioning authority keeping in view the accuracy of the information, risk undertaken by the informer, the probability of the case being established and/or sustained on adjudication/appeal, The amount of duty / penalty recovered. In view of the observation of Chairman, C.B.E.C., the case of the petitioner was considered by the reward sanctioning authority. The representation of the petitioner was rejected by the reward sanctioning authority, which was duly communicated to the petitioner vide order dated 06.04.2011.

The petitioner initially challenged the order dated 06.04.2011 communicating the decision of the appropriate authority rejecting his prayer for grant of award money. Realizing that he has not challenged the order rejecting the representation, the petitioner filed I.A. applications for making amendment in the prayer, which were allowed. The relevant order rejecting his representation has also been brought on record by the Excise Department vide Annexure-B to the 3rd Supplementary Affidavit filed on 21.11.2014. It appears from the impugned order dated 09.03.2011 that the reward sanctioning authority had rejected the prayer of the petitioner for grant of reward in view of para.7.1 of the guidelines dated 20.06.2001 for final reward, which is quoted herein below:

> "Final rewards to the informers as well as officers should be sanctioned and disbursed only after conclusion of adjudication/appeal/revision proceedings <u>subject to recovery."</u>

Counsel for the respondents submits that as there was no recovery, the petitioner was not entitled any Reward money.

Counsel for the petitioner submits that the Department was responsible for the delay in filing the reference before the Allahabad High Court, which was dismissed on the ground of limitation, and subsequently, appeal preferred against the same was dismissed by the Hon'ble Supreme Court also on the ground of limitation. The petitioner submits that a person should not suffer on account of fault of the employer. In support of his submissions, he has relied upon a decision of the this Court in case of Ram Mohan Prasad Vs. The State of Bihar & Others, reported in 2007 (Supp) PLJR 275. In the aforesaid case, the learned Single Judge relying upon the decision rendered in case of All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City, reported in A.I.R. 1954 Bombay 232, observed that a person should not be allowed to suffer for the fault of others.

On this analogy, learned counsel for petitioner submits that if the Department had pursued its remedy in time, the case could have been fought and won, as reference application was filed belatedly before the High Court and the same was rejected.

The submission of the petitioner is only to be noticed to be rejected.

In my view, the aforesaid principle would not apply in the facts and circumstances of the present case. Para. 7.1 of the guidelines clearly stipulate that final reward to the informer would be sanctioned and disbursed after conclusion of the proceedings subject to recovery. Admittedly, there has been no recovery. The petitioner has not challenged the guideline, which starts today.

I find that the Department filed Writ application before the Delhi High Court, which was subsequently permitted to be withdrawn, to be filed before the appropriate authority.

Thereafter it was filed before the Allahabad High Court, which was dismissed on the ground of delay. An appeal too was carried before the Hon’ble Supreme Court, which too was dismissed. The Department even filed review before the Hon’ble Supreme Court, which too was dismissed.

I find that the Department availed all legal options open to it under the law. I further find from order dated 09.03.2011 Annexure-B to the IIIrd Supplementary affidavit that the review application was rejected both on the ground of delay as well as on merits.

There are no tangible materials on record to draw a conclusion that there was no deliberate attempt on the part of the Department to help the private company. The guideline contained in para.4.1 of Chapter XIX of the Reward and Policy Rules, which has not been challenged, would hold the field. As such I do not find any merit in this application and the same is dismissed.

(Samarendra Pratap Singh, J.)

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