

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : .07.2015

CORAM:

The Honourable Mr. Justice S.VAIDYANATHAN

Writ Petition Nos.13672 to 13675 of 2015

And M.P.Nos.1 to 1 & 2 to 2 of 2014

Reserved on 30.03.2015

M/s.Adani Enterprises Ltd.,
having its office at
Adani House,
Near Mithalakhali Circle,
Navarangpura,
Ahmedabad-380 009 (Gujarat),
Acting through its

Authorized representative Jay Amin

..Petitioner in
All Writ Petitions

Versus

1. Union of India,
Rep. by Secretary,
Ministry of Finance
Department of Revenue,
North Block,
New Delhi-110 001.
2. Government of India,
Rep. by Joint Secretary,

Department of Revenue
Ministry of Finance, Government of India,
14, HUDCO Vishala Building,
B-Wing, 6th Floor, Bhikaji Cama Place,
New Delhi-110 066.

3. The Central Board of Excise and Customs,
153, North Block,
New Delhi-110 001.
4. Commissioner of Customs & Central Excise,
No.1, Foulk's Compound,
Anna Medu,
Salem-636 001.
5. Additional Commissioner of Central Excise,
No.1, Foulk's Compound,
Annai Medu,
Salem-636 001.
6. Assistant Commissioner of Central Excise,
Erode II Division,
No.81, Bharathy Nagar, Sathy Road,
Erode-638 004.
7. Superintendent of Central Excise, Customs & Service Tax,
Gobi Range,
47, Cutchery Street, Gobichettipalayam .. Respondents in
All Writ Petitions

Prayer in W.P.No.13672 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records of Demand Letter bearing C.No.IV/16/94/2010-C.Ex.TAR dated 9th April, 2014 issued by the respondent No.6 and quash the same.

Prayer in W.P.No.13673 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records of Order No.74/14-CS, dated

6.3.2014 passed by the respondent No.2 and quash the same.

Prayer in W.P.No.13674 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records of Demand Letter bearing O.C.No.316/2014, dated 4-4-2014 issued by the respondent No.7 and quash the same.

Prayer in W.P.No.13675 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, to direct the respondents and their officers to supply the documents relied upon the show cause notice No.26/2004(ADC/Salem), dated 30.4.2004 issued by the respondent No.5 to the petitioner and direct de novo adjudication proceedings thereon after supply of the documents relied upon in the said show cause notice, dated 30.4.2004.

For Petitioner : Mr.Karthik Sundaram

For Respondents : Mr.V.Kadhirvelu for R1&R2
Mr.V.Sundareswaran, SPC
for R3toR7

COMMON ORDER

Since the issues involved in all these writ petitions are co-related and the parties are one and the same, these Writ Petitions are taken up together for final disposal.

2. M/s.Adani Enterprises Limited, the petitioner herein, is primarily engaged in import and export of various commodities including textiles. In the process of business of import and export of various goods, the petitioner have procured grey woven power loom fabrics from various places and got them processed at M/s.Erode Rana Textile Processors Ltd., Erode and thereafter, they exported to various foreign countries. The petitioner claimed rebate of duty as per Notification No.31/98, dated 16.2.1999 to the tune of Rs.81,68,999/- for the goods exported by them during the period of January 1999 to March 2000. Upon investigation by the Central Excise Preventive Group, it was revealed that the processor who undertakes processing of fabrics for several customers had suppressed the actual production of the processed fabrics in the statutory records and had shown only lesser quantity. Hence, the petitioner was put on notice by the department proposing for recovery of the excess rebate sanctioned. Upon confirmation of the demand for recovery of the excess rebate sanctioned along with interest besides imposition of penalty by the lower authority vide Order-in-Original Sl.No.5/2006, dated 31.3.2006.

3. Aggrieved by the said order, dated 31.3.2006, the

petitioner preferred an appeal before the Commissioner (Appeals), Salem. The appellate authority vide his order-in-appeal No.144/2006, dated 1.8.2006, while setting aside the order, dated 31.3.2006, remanded the matter to the lower authority. However, the matter was adjudicated denovo vide order, dated 12.09.2008, confirming the demand of Rs.30,73,604/- along with interest and penalty of Rs.30,73,604/-. Again, the petitioner preferred an appeal before the Commissioner (Appeals), who, by order, dated 29.1.2010 rejected the said appeal. Against the said dismissal, the petitioner took the matter in appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). By order, dated 5.9.2011, the Tribunal rejected the appeal on the ground of non-maintainability and lack of jurisdiction. Aggrieved by the said order, the petitioner moved a revision application with the Ministry of Finance, which also came to be dismissed as devoid of merits vide order, dated 6.3.2014. Consequent to the dismissal of the revision, the 7th respondent sent demand letter, dated 4.4.2014, demanding Rs.30,73,604/- along with interest and penalty. Further, the 6th respondent also sent demand letter dated 9.4.2014, demanding the same.

4. Questioning all these proceedings, the petitioner has come forward with the present writ petitions.

5. A common counter affidavit has been filed on behalf of the respondents, wherein, while reiterating the facts of the case, it is stated that non-supply of relied upon documents to the petitioner does not arise inasmuch as the 5th respondent/adjudicating authority itself has categorically held that there is no necessity to provide copies of documents sought for by the petitioner. This view of the 5th respondent was also confirmed by the 4th respondent/Commissioner (Appeals) having convinced with the findings of the lower authority who passed the denovo order reconfirming the earlier stand without providing copies of any more documents to the petitioner and without granting a personal hearing. According to the respondents, when the processor himself has accepted the contents of the documents as correct and accepted their guilty, providing copies of some of the documents for perusal by the petitioner is neither warranted nor will serve any purpose. Hence, it was rightly found that there was no infirmity in

the denovo order and the plea of the petitioner was rightly rejected and therefore, the contention of not obeying the order of the appellate authority by the lower authority cannot stand. There is no need for the department to file appeal against the order of the Commissioner (Appeals) since he only remanded the matter to the original authority.

6. It is further stated in the counter affidavit that the manufacturer processor of fabrics had admitted the offence regarding suppression of production and clearance to various parties and thus the petitioner claimed excess rebate over and above the eligible rebate based on the disclaimer certificate issued by the manufacturer, who actually paid the appropriate duty under ACP scheme. Thus an order in original, dated 28.8.2006 had been passed by the Commissioner of Central Excise, Salem on the processor M/s.Erode Rana Textile Processors (P) Ltd., Bhavani (ERTP) confirming the demand of Rs.4,00,72,500/- along with interest besides imposition of penalties. The said ERTP have not filed any appeal against the said order and also they have not disputed the quantity of production unearthed by the department. In such situation, the petitioner/exporter has to accept the

production suppressed by the manufacturer and claimed excess rebate thereof. In order to escape from the liability only, the petitioner requested for the documents, which serve no purpose for their defence. Therefore, having regard to the facts and circumstances and the well considered orders passed by the lower authorities, the 2nd respondent has rightly rejected the revision application filed by the petitioner, which does not warrant interference of this Court. With these averments, the respondents sought for dismissal of the writ petitions.

7. Heard the learned counsel appearing for the parties and perused the entire documents available on record.

8. The specific case against the petitioner is that it had claimed rebate based on the production particulars submitted by M/s.Erode Rana Textile Processors (P) Ltd., Bhavani (ERTP) to the department and the production particulars submitted by M/s.ERTP to the department is less compared to the actual production since they have suppressed the same and as the petitioner had claimed rebate based on the suppressed production, they have wrongfully received excess rebate than eligible as the rate of rebate is inverse

of production. Therefore, appropriate proceedings were initiated by the department against the petitioner which eventually culminated in issuing show cause notice, dated 30.4.2004, which was served on the petitioner on 10.5.2004. It is not in dispute that in the show cause notice, it has been clearly mentioned that the petitioner was permitted to peruse the records relied upon by the department and take copies thereof, if required. Pursuant to the same, the petitioner sent a letter dated 31.5.2004 to the 5th respondent, requesting to send the relied upon documents to them at Ahmedabad. However, since there was no provision to send the relied upon documents to the notice as the notice was only permitted to peruse the said documents and take copies thereof, it appears that no documents were sent by the 5th respondent. Thereafter, again the petitioner sent a letter dated 24.6.2004 and 11.9.2004, requesting to send the documents to Ahmedabad. As there was no reply to the show cause notice after a lapse of 18 months, a personal hearing was fixed on 8.12.2005 and thereafter, the matter was adjourned from time to time providing personal hearing to the petitioner. However, since there was no appearance on behalf of the petitioner despite enough opportunities, the 5th

respondent decided the issue on the basis of the materials available on record and accordingly, passed *ex parte* order in original, dated 31.3.2006, demanding Rs.30,73,604/- apart from imposing penalty and interest. Aggrieved against the said order, dated 31.3.2006, the petitioner has preferred an appeal before the Commissioner (Appeals), who, by order in original, dated 1.8.2006, has categorically held that the impugned order, dated 31.3.2006 is not sustainable in law inasmuch as the same has been passed by the 5th respondent without providing the relied upon documents, which is in violation of principles of natural justice and accordingly, while setting aside the said order, remanded the matter to the 5th respondent with a specific direction, which reads as under:

"6.5. ... the Lower Authority is directed to supply the relied upon documents to the appellant. If the documents are voluminous, the appellant should be given adequate opportunity for perusal of the documents and to take copies of the same if required by the appellant. The appellant is directed to submit the reply within one month from the date of completion of the receipt/perusal of the relied upon documents and the lower authority is directed to pass an appealable order thereafter. It is needless to stress that appellant should be given the opportunity of

hearing before passing the order.”

9. Pursuant to the above order, if the 5th respondent has acted in terms of the directions given by the appellate authority, absolutely the matter would be different. However, the 5th respondent, by order, 12.09.2008, has dealt with the circumstances under which, there is no necessity to provide copies of relied upon documents to the petitioner. A perusal of the entire order, dated 12.09.2008, I am of the view that it is no doubt, certainly a well considered and acceptable one since the 5th respondent has taken extraneous efforts by discussing each and every point in detail for reaching to the definite conclusion as to how the petitioner in collusion with M/s.ERTP, indulged in defeating the very purpose of scheme by claiming excessive rebate illegally. But, at the same time, this Court cannot ignore the fact of the benefit derived by the petitioner by virtue of succeeding in the appeal before the Commissioner of Central Excise (Appeals), who in fact, has considered the dictum of the Apex Court pertaining to the doctrine of “*audi alteram partem*” and while following the various decisions of the Apex Court and Tribunals, has come to the conclusion that

the order was passed in violation of principles of natural justice. It is appropriate to extract the relevant portions in the order of the Commissioner of Central Excise (Appeals), as under:

“6.2. From the above, it is seen that the entire case is on the documents recovered from the job worker of the appellant. Therefore, the appellant is right in asking for the documents for perusal before giving any reply. It cannot be said that there is laxity on the part of the appellant. The appellant has repeatedly asked for the relied upon documents from the Lower Authority vide his letters dated 31.5.2004, 24.06.2004, 11.09.2004, 14.02.2005, 01.12.2005, 19.01.2006 and 23.2.2006. None of the letters seems to have been replied by the Lower Authority. If the letters had been replied properly and if the appellant has not availed the opportunity, it would have been proper to hold that the appellant has not availed the opportunity and hence there is no violation of principles of natural justice. Contrary to the above facts, the appellant has not been provided with the relied upon documents and decided the case, which is not sustainable in law.”

... ..

"6.5. Abiding by the above decisions, I hold that the impugned order is not sustainable in law inasmuch as the same has been passed by the Lower Authority without providing them the relied upon document in violation of the principles of natural justice. I, therefore, set aside the impugned order and remand the case back to the lower authority for denovo proceedings. ..."

10. Therefore, the appellate authority has categorically come to the conclusion that the entire case is on the documents recovered from the job worker of the appellant and the petitioner is right in asking for the documents for perusal before giving any reply and that none of the letters sent by the petitioner were not replied by the 5th respondent nor furnished the documents, which amount to violation of principles of natural justice. When such being the conclusion, it is not appropriate for the 5th respondent, to act beyond the order of the appellate authority and to give reasons under which, it is not necessary to furnish the documents, which were not discussed by the appellate authority. I am perplexed rather than failed to understand the observation made by the 5th respondent in para 19 of his order stating that "... **When the**

whole scheme of evasion through illicit design had been accepted and uncontested by the processor M/s.ERTP, I hold that there is no necessity to provide such copies of documents to M/s.AEL." Admittedly, the petitioner has neither accepted nor uncontested the matter and since M/s.ERTP has accepted the evasion of the scheme, it does not mean or construe that the petitioner also accepted the same. In fact, the petitioner has been denying its involvement and repeatedly seeking for production of the documents by sending to its unit at Ahemedabad. If at all there is no provision to send documents or if there are voluminous documents, as such the 5th respondent ought to have replied to the petitioner so that the petitioner could have made arrangements or atleast he would have intimated that there is no necessity to provide any of copies of the documents and call for explanation. Further, it is quite surprising to note that the order of the 5th respondent, dated 12.09.2008 has been confirmed by the Commissioner of Central Excise (Appeals), Salem, holding that "...
In view of the facts and circumstances of the case as it stands now I am fully convinced with the findings of the lower authority who has passed the *denovo* order

reconfirming the earlier stand without extending the opportunity to the appellants to peruse the relied upon documents and without granting a personal hearing. The documents required for perusal by the appellants are those of the processor M/s. Erode Rana Textile Processors Ltd., Erode. When the processor himself has accepted the contents of the documents as correct and has accepted their guilty subjecting those documents for perusal by the appellants is neither warranted nor will serve any purpose.

...". Having convinced with the findings of the 5th respondent, the Appellate authority has nothing but dissected from its own earlier order, dated 01.8.2006 wherein, as already stated, having discussed the issue in detail by following the rulings of the Apex Court in the matter of *audi alteram partem*, directed the lower authority to provide an opportunity to the petitioner to peruse the relied upon documents/personal hearing. It shows that the authorities were fully satisfied than the aggrieved party. It is pertinent to note that there was no change in the circumstances between the first round of orders of the authorities and the present impugned orders and it appears that what are all left to be considered, were considered and passed the present orders when

the petitioner approached on second time. Therefore, it is not fair and appropriate for the appellate authority to dissect from its own earlier order and come to contrary conclusion, that too at first stage, giving relief to the aggrieved party and at later stage, taking away such relief and if it is allowed, in my opinion it would certainly lead to travesty of justice as it amounts to violation of principles of natural justice. As already, the appellate authority discussed well settled principles of natural justice, this Court does not delve upon and narrate the decisions of the Apex Court in the matter of violation of principles of natural justice. This was not considered by the revisional authority also and passed impugned order. Therefore, on this ground alone, without going merits of other aspects, this Court is inclined to set aside the impugned orders.

11. In the result, the Writ Petitions are allowed, setting aside the orders impugned therein. No costs. The 5th respondent is directed to provide an opportunity to the petitioner to peruse all the documents and permit to take copies of such documents if requested by the petitioner and thereafter proceed with the matter afresh in accordance with law and on merits, after affording an

opportunity to the petitioner. Consequently, connected MPs are closed.

Suk

04-08-2015

Index: Yes/No

Internet: Yes/No

S.VAIDYANATHAN, J.
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PRE DELIVERY ORDER
W.P.NOs.13762 to
13765 OF 2014

04-08-2015