IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 29.4.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8502 of 2015

1 M/s.Confidence Petroleum
India Ltd. 404 Satyam Apartment 8 Wardha
Road Nagpur Rep by Authorised Signatory
Ankur Rathi ... petitioner

Vs

1 Additional Commissioner of
Customs Central Excise and Service Tax 6/7
A.T.D. Street Race Course
Coimbatore 641 018

2 Superintendent
Office of the Commissioner of Central
Excise and Customs Kendriya Utpad Shulka
Bhavan Telangkhedi Road Civil Lines
Nagpur 440 001 ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for records in the impugned order in C.No.V/PKGS/15/2/2011-STC.Add Order Sl. No. 57/2011-ADC dt 30.11.2011 passed by the 1st respondent and quash the same and direct the 1st respondent to provide adequate hearing to the petitioner and to pass appropriate order in accordance with law.

For petitioner Ms.Nisha Bineesh

For respondents Mr.A.P.Srinivas

O R D E R

The petitioner has come forward with this Writ Petition challenging the order in original dated 30.11.2011 issued by the Additional Commissioner of Customs, Central Excise and Service Tax, Coimbatore, the first respondent herein, and the consequential recovery notice dated 4.2.2015, issued by the second respondent, on the ground that the order in original was an exparte order, passed without hearing the petitioner and such an order is against the principles of natural justice. According to the petitioner, no notice of hearing was issued by the first respondent for personal hearing. Since the recovery notice is a consequential order of the order in original, the same is liable to be quashed.

2. The learned counsel for the petitioner submitted that the petitioner was engaged in the activity of bottling of LPG cylinders for various industrial customers, with service tax registration no.AAECS5913RST002, dated 29.8.2007, for their bottling plant at 39 and 40, Arasapalayam Village, Kinthukadavu, Coimbatore 642 109, under the category of packaging services. It is submitted that the said unit at Coimbatore was closed in the year 2009. After closing down the office at Coimbatore, the office at Bombay alone is operating and all business activities are carried on from there. Therefore, even assuming that the respondents had issued notice to the office at Coimbatore, as contended earlier, since the said unit was closed down way back in the year 2009, it is clear that the order in original dated 30.11.2011 was passed without giving an opportunity of hearing to the petitioner, hence the same is liable to be set aside. The learned counsel prayed that the respondents may be directed to provide all reasonable opportunities to the petitioner.

3. Mr.A.P.Srinivas, learned Standing Counsel for the respondents submitted that the recovery notice dated 4.2.2015 was passed as a consequential order to the order in original dated 30.11.2011. The learned counsel fairly submitted that a direction may be issued to the petitioner to cooperate with the respondents to complete the final order of assessment.

4. After hearing the parties, this Court is of the view that the learned counsel for the petitioner is correct in her submission that the respondents have passed the impugned order behind the back of the petitioner, without affording an opportunity of personal hearing. When the unit at Coimbatore was closed down way back in the year 2009, and thereafter, they have been functioning only from office at Bombay, the respondents were not correct in sending show cause notice to the Coimbatore address and then passing an exparte order, behind the back of the petitioner, therefore, the order in original dated 30.11.2011 is quashed. Consequently, the recovery notice dated 4.2.2015 is also quashed.

5. Personal hearing of the petitioner is fixed on 15th June 2015 at the adjudicating office at Coimbatore. The petitioner is directed to appear before the Adjudicating Officer on the said date and extend their full cooperation for completion of the proceedings. After providing personal hearing, it is open to the respondents to pass appropriate order on merits and in accordance with law.

6. The Writ Petition is disposed of with the above direction. No costs. Consequently, M.P.Nos.1 and 2 of 2015 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tar

To

1 Additional Commissioner of
Customs Central Excise and Service Tax 6/7
A.T.D. Street Race Course
Coimbatore 641 018

2 Superintendent
Office of the Commissioner of Central
Excise and Customs Kendriya Utpad Shulka
Bhavan Telangkhedi Road Civil Lines
Nagpur 440 001.

+ 1 cc o Ms.Nisha Bineesh, Advocate Sr.25177

W.P.No.8502 of 2015

JSV(CO)
Eu 22.05.15