BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.03.2015

CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
W.P.(MD)No.3316 of 2015

VV Mineral,
Rep. by its Managing Partner
S.Vaikuntarajan. ... Petitioner

Vs.

The Commissioner of Central Excise,
Central Revenue Building,
Tractor Road,
NGO-'A' Colony,
Tirunelveli - 627 007. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent pertaining to the SCN No.29/COMMR/CE/2014, dated 26.12.2014 and quash the same.

For Petitioner :Mr.M.S.Krishnan
learned Senior Counsel for
M/s.K.Govindarajan
For Respondent :Mr.B.Vijay Karthikeyan

O R D E R

The Writ Petition is filed challenging the show-cause notice issued by the respondent, dated 26.12.2014.

2. The impugned show-cause notice called upon the petitioner to show cause to the Commissioner of Central Excise, Central Revenue Building, Tirunelveli, as to why:

'(i) the products viz. Ilemenite, Zircon, Rutile, Sillimanite, leucoxene manufactured out of sea sand(ore) and cleared the same during the period from 01.03.2011 to 31.03.2014 should not be classified as concentrates of Ilemenite, Zircon, Rutile, Sillimanite and leucoxene under chapter sub heading 26140020, 26151000, 26140031, 26060090 and 26140090 of CETA respectively.

(ii) An amount of Rs.76,67,96,735/-(Rupees Seventy Six Crores Sixty Seven Lakhs Ninety Six Thousand Seven Hundred Thirty Five Only) as detailed in the worksheet annexed to this notice being the Central Excise duty(including primary education cess and secondary and higher education cess) should not be demanded under proviso to Section 11A(1) of the Act as it stood upto 07.04.2011 and thereafter under sub-section 4 of Section 11A of the Act on the mineral concentrates of Ilemenite, Zircon, Rutile, Sillimanite, leucoxene etc.

manufactured and cleared during the period from 01.03.2011 to 31.03.2014.

(iii) Interest at appropriate rate on the amount of duty demanded above should not be demanded under Section 11AB of the Act as it stood upto 07.04.2011 and thereafter under Section 11AA of the Act,

(iv) Penalty should not be imposed under Section 11 AC of the Act, read with Rule 25 of Rules for the contravention of the Act and Rules as stated above."

3. The petitioner was given thirty days time from the date of receipt of notice to give their explanation.

4. The learned senior counsel Mr.M.S.Krishnan, appearing for the petitioner contended that though the impugned notice is styled as a show-cause notice, in effect the respondent has pre-determined the issue and therefore, there is no purpose in giving any reply to the show-cause notice and submit the petitioner for adjudicating the issue. He further submitted that in respect of similarly situated persons, exemptions have been granted, whereas the petitioner is treated differently. He further submitted that the invocation of Section 11A of the Central Excise and Salt Act, 1944, for extending the period of limitation to issue show-cause notice, is also not correct and such extension of period of limitation, has also been predetermined by the respondent against the petitioner without hearing them.

5. I have perused the show-cause notice impugned in this writ petition and I am not in a position to agree with the submissions made by the learned Senior Counsel appearing for the petitioner since the very show-cause notice itself was issued calling upon the petitioner to show-cause by making certain allegations against the petitioner. The very language used in the said notice to the effect that "it appears to the Department that the assessee has contravened" and that "it appears to the Department that the assessee has willfully suppressed the fact", would only mean that, it is only a prima facie view of the Revenue against the petitioner and therefore it can not be said that the authority, who issued the show-cause notice has predetermined the issue. Needless to say that it is open to the petitioner to place all materials before the Authorities by way of making a reply to the show-cause notice and satisfy that the allegation made against the petitioner is factually not correct and that the invocation of Section 11A is also unwarranted. It is well settled that this Court while exercising its jurisdiction under Article 226 of Constitution of India, cannot interfere with the show-cause notice so long as the same has been issued by the competent Authority. The decision of the Honourable Supreme Court in *Union of India vs. Vicco Laboratories* reported in *2007(218) E.L.t. 647 (S.C)* is relevant to be quoted at this juncture, wherein it has been held as follows:

"30.Normally, the writ Court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ Court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."

6. Therefore, I am of the considered view that this Writ Petition challenging the show-cause notice, is not maintainable and the petitioner has to only give their explanation to the show-cause notice before the respondent.

7. The learned Senior Counsel appearing for the petitioner submitted that they have sought for certain documents from the respondent for issuing proper reply to the show-cause notice and the said request is yet to be considered by the respondent. If any such request is made, it is needless to say that the respondent shall consider the same and furnish the relevant documents, which are relied on in the show-cause notice.

8. Accordingly, the Writ Petition is dismissed as not maintainable, without going into the merits and contentions raised by the Writ Petitioner in respect of the allegation made in the show-cause notice. The petitioner is given four weeks time from the date of receipt of the documents sought for by the petitioner, to furnish their explanation to the show-cause notice. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To

The Commissioner of Central Excise, Central Revenue Building,
Tractor Road, NGO-'A' Colony, Tirunelveli - 627 007.

+1cc to MR.K.GOVINDARAJAN, ADVOCATE IN SR : 11559
+1cc to MR.B.VIJAY KARTHIKEYAN, ADVOCATE IN SR : 11502

Pm
SR : 27.03.2015 : 3p/4c

W.P.(MD)No.3316 of 2015
10.03.2015