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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.897 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 11642 of 2011
Along with
Interlocutory Application No.3797 of 2015

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Surinder Choudhary, S/o Late Phaguni Choudhary, resident of village- Madhaul, P.O.- Motipur Via- Tajpur, P.S.- Tajpur, District- Samatipur.

.... Petitioner- Appellant

Versus

1. The Union of India through the Secretary, Department of Finance (Revenue) Custom and Central Excise North Block, New Delhi.
2. The Chairman, Board of Custom and Central Excise, Department of Revenue, Govt. 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 & Central Excise, Revenue Building, Birchand Patel Marg, Patna.

.... Respondents-Respondents

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Appearance :

For the Appellant	:	Mr. Sachida Nand Kishore Pd. Sinha, Advocate Mr. Dharmendra Kumar Paswan, Advocate
For the Respondents	:	Mr. Satya Prakash Tripathy, Sr. Standing Counsel
For the State	:	Mr. M. N. H. Khan, S.C.-1 Mr. Md. Irshad, A.C. to S.C.-1

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
And
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 17-08-2016

Re.: Interlocutory Application No.3797 of 2015

The application is for condonation of delay of one day in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that

sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.897 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 12th of January, 2015 whereby, a writ application filed by the appellant for payment of reward money in terms of the policy of the Central Excise Department remained unsuccessful.

2. The appellant was an employee of M/s. Punjab Fibers Limited. He informed the Central Excise Department that M/s. 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. On the basis of information supplied, the investigations were carried out. The adjudicating authority passed an order on 30th of March, 2001 whereby an additional excise duty of Rs.1,17,13,520/- along with penalty of Rs.1,17,13,520/- was imposed. An appeal against the said order filed by the M/s. Punjab Fiber Ltd. was dismissed on 30th of April, 2002. However, in further appeal, the Central Excise and Service Tax Appellate Tribunal (for short the Tribunal) vide its order dated 12th of

February, 2002 dropped the entire duty demand against M/s. Punjab Fibers Limited. A reference petition against the said order was filed by the Department firstly before the Delhi High Court which was dismissed as withdrawn with liberty to file the same before an appropriate authority. Subsequently, the reference was filed before the Allahabad High Court which was dismissed on the ground of limitation. Civil Appeal No.4647 of 2007 against the said order was dismissed by the Hon'ble Supreme Court 14th of February, 2008. Later, the review petition was also dismissed on 27th of August, 2009.

3. It may be stated that the appellant was sanctioned Rs.6,85,000/- out of which Rs.50,000/- was paid as an advance reward money on 6th of July, 1999. Since the claim of the appellant for release of the reward money was not accepted, he invoked the jurisdiction of this Court which remained unsuccessful before the learned Single Bench.

4. The grievance of the appellant is that the Department intentionally invoked the jurisdiction of the wrong forum that is of Delhi High Court and, therefore, for default of the Department, his reward money cannot be denied and he is entitled to the said amount. He relies upon a learned Single Bench judgment of this Court reported as Ram Mohan Prasad Vs. State of Bihar & Ors. 2007 (Supp) PLJR 275.

5. Learned counsel for the appellant also refers to a Division

Bench judgment of the Madras High Court since reported as Union of India v. C. Krishna Reddy, 2000 (123) E.L.T. 499 (Mad), to contend that in terms of the guidelines, a right accrues to the appellant for payment of reward money irrespective of the recovery of the demand on the conclusion of the adjudication proceedings.

6. We have heard learned counsel for the appellant and find no merit in the present Letters Patent Appeal. The policy of reward appended by the Appellant is Annexure-2 with the writ application whereas the detailed policy circulated on 30th of March, 1985 has been appended by the respondents along with the counter affidavit. The relevant extracts from policy dated 30th of March, 1985 read as under:-

> “ 4.1. Reward is purely an ex-gratia payment which, subject to the 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 seizures, 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. Stage of payment of reward – Payment of advance rewards.
>
> 5.1. Advance reward may be paid to informers and government servant upto 50% of the expected final reward immediately on seizure in respect of the

following categories of goods, namely:-

a) Gold/silver bullion and goods which are notified; or specified under the Customs Act, 1962;

b) Arms and ammunition, explosives;

c) Opium and other narcotic drugs;

d) Goods not declared which are seized in the customs area or customs waters; and

e) Freely convertible foreign exchange in the form of currency notes.

6. Payment of Final reward.

6.1. Final reward will be paid after adjusting the advance reward, if any, paid in the manner as indicated in succeeding paras.

6.2. In respect of the goods described in para 5.1, the remaining 50% of the reward may be sanctioned both to informers and government servants on adjudication of the case resulting in confiscation of the goods. If, however, the party concerned delays adjudication proceedings by contesting the imposition of penalty only but not confiscation of the goods, the final reward may be sanctioned even prior to the conclusion of the adjudication proceedings.

6.3. In all other cases, 25% of the expected final reward may be paid after adjudication resulting in confiscation and/or confirmation of the demand/infringement and the remaining 50% may be paid only after the conclusion of the appeal/revision proceedings by the appropriate authorities, (such as, Tribunals, FERA Board, etc.) resulting in the upholding of confiscation, demand/fines/penalties, etc. imposed under the respective Acts."

7. The policy dated 30th of March, 1985 was revised on 13th of April, 1989. The relevant extract of such policy read as under:

"3. Advance rewards in Central Excise evasion cases and Customs appraising cases will be sanctioned only after adjudication of such cases and only if the authority competent to sanction the reward is satisfied that the orders are likely to be sustained in appeal/revision proceedings."

8. The Scheme for grant of reward was further modified vide Letter [F. No. R-13011/6/2001-Cus (AS), dated 20.06.2001]. Para 7.1. read as under:-

> "7.1 Final rewards, both the officers as well as informers, should be sanctioned and disbursed only after conclusion of adjudication/appeal/revision 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 instructions in para 4.3. above as regards rewards to Govt. 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."

9. A perusal of the policy shows that the reward is purely an ex-gratia payment which is subject to the guidelines and in the absolute discretion of the authority competent to grant rewards. It cannot be claimed as a matter of right. The reward is payable in two stages, i.e. advance rewards and then after final adjudication. Final reward is payable after adjudication of the case resulting in confiscating the goods or on the realization of the demand as the case may be, but in case of delay in adjudication proceedings, the final reward can be sanctioned even prior to the conclusion of the adjudication proceedings. But in other cases, the final reward can be paid only after adjudication

proceedings resulting in confiscation and/or confirmation of the demand and after conclusion of the appeal/revision proceedings by the appropriate authorities resulting in upholding of confiscation demand/fines/penalties etc. imposed under the respective Acts.

10. As per the facts on record, the demand raised by the adjudicating authority was affirmed by the appellate authority, but the same was set aside by the Tribunal. The further reference before the High Court stands dismissed as barred by limitation and the appeal before the Supreme court stands dismissed. Even the review application before the Supreme Court was dismissed. Therefore, it cannot be said that the Department was negligent in not prosecuting the adjudication proceedings before an appropriate forum in accordance with law. Even if the reference was sought within time, one cannot be presumptuous to say that it would end in favour of the Department. It is too preposterous to say that the Department intentionally invoked the jurisdiction of the Delhi High Court only for the purpose of avoiding the payment of reward money to the appellant. The Department acts under the legal advice received from time to time. It is true that the Department was advised to seek reference from Delhi High Court, may be for the reason that Tribunal is located in Delhi, but the same was withdrawn from Delhi High Court and it was preferred before the Allahabad High Court. If in the process, the reference has become barred by limitation, it

cannot be said that the Department was not prosecuting the matter before an appropriate Forum in accordance with law.

11. The reward can be given only after final conclusion of the adjudication proceedings confirming demand and on its realization. Since the Tribunal has set aside the demand, therefore, the appellant cannot claim reward as in law it was found that nothing is payable by M/s. Punjab Fibers Limited. The reward, as per the policy extracted above, is on the successful completion of the adjudication proceedings. Since there was no successful completion, the appellant cannot claim payment of reward money for the reason that his information led to at one stage raising of a demand.

12. The judgment of this Court in Ram Mohan Prasad's case (supra) deals with the promotion granted to an employee with retrospective effect but denied the consequential benefits. The said judgment has no applicability to the facts of the present case as it was found that promotion was denied for no fault of the employee. When the Department has taken steps before an appropriate Forum, including the appeal and review before the Supreme Court, it cannot be said that it was not prosecuting the proceedings diligently. As an informer, the appellant does not sit over the actions of the Department and comment on the actions taken by the Department. That is not the role assigned to an informer.

13. In fact, the learned counsel for the appellant has referred to a judgment which stands set aside in a judgment reported as Union of India and others Versus C. Krishna Reddy, (2003) 12 SCC 627. The Court held to the following effect:-

> "**11.** In our opinion, the view taken by the High Court that the revised guidelines would not apply is patently erroneous both on the fact situation of the case and also as a principle of law. The respondent has himself averred in para 14 of the writ petition that the Collector of Customs, Madras decided the case by his order dated 5-3-1993 and thereafter, he started contacting the officers of the Department for payment of the reward. He, therefore, made a claim for grant of reward for the first time in 1993. In *Union of India* v. *R. Padmanabhan (2003) 7 SCC 270: JT (2003) 7 SC 196,* exactly same question was examined and it was held that being ex gratia no right accrues to any sum as such till it is determined and awarded and, in such cases, normally it should not only be in terms of the guidelines and policy, in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the scheme itself. It was also held that the question of any vested rights accrued being protected from any subsequent amendments would not arise in such a case and, therefore, the guidelines, as are in force on the date of consideration will really be applicable and relevant.
>
> **12.** …………..The High Court in writ jurisdiction cannot examine or weigh the various factors which have to be taken into consideration while deciding a claim regarding grant of reward. These are matters exclusively within the domain of the authorities of the Department as they alone can weigh and examine the usefulness or otherwise of the information given by the informer. In the writ petition filed by the respondent, no details had been given on the relevant issues. If the grant of reward cannot be claimed as a matter

of right, it is not understandable as to how a writ of mandamus can be issued commanding the Government to give a particular amount by way of reward………..”

13. It is well settled by a catena of decisions of this Court that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of the writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. Therefore, in order that a mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. [See *Bihar Eastern Gangetic Fishermen Coop. Society Ltd.* v. *Sipahi Singh, (1977) 4 SCC 145: AIR 1977 SC 2149,* AIR para 15, *Lekhraj Sathramdas Lalvani* v. *N.M. Shah, Dy. Custodian cum Managing Officer, AIR 1966 SC 334,* and *Umakant Saran (Dr.)* v. *State of Bihar (1973) 1 SCC 485: AIR 1973 SC 964*.]

14. By the very nature of things, no one has a legal right to claim a reward. The scheme itself shows that it is purely an ex gratia payment subject to guidelines and may be granted on the absolute discretion of the competent authority and cannot be claimed by anyone as a matter of right. In such circumstances the High Court committed manifest error of law in issuing a writ of mandamus directing the appellant to pay the amount to the respondent……”.

14. In view of the aforesaid judgment, the claim of the appellant for reward through a writ of mandamus is wholly misconceived. The same is not entertainable in terms of the Scheme

framed as the reward is contemplated only on the final determination.

15. In view of the scheme and the order of the Supreme Court, the appellant has rightly not been found entitled to reward money as the Circulars contemplates the payment of reward money after actual realization of the Central Excise Duty, Customs Duty, penalty, fine etc.

16. We do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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