IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8151 OF 2015

VIP Industries Limited ..Petitioner

Vs.

The Union of India and Others ..Respondents

Mr. Prakash Shah a/w Mr. Jas Sanghavi i/b PDS Legal,for the Petitioner.

Mr. Pradeep S. Jetly a/w Mr. Jitendra B. Mishra,for the Respondents.

CORAM :- **S.C. DHARMADHIKARI & B.P.COLABAWALLA, JJ.**

DATE :- **NOVEMBER 21, 2016.**

P. C.:

On 17th October, 2014 Appeal Nos. E/167/2004-Mum and E/231/2004-MUM arising out of the order in Appeal passed by the Commissioner of Central Excise (Appeals), Pune dated 5th August, 2003 has been allowed by the Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai.

2 The Petitioner / Original Respondent to the above Appeal before the Tribunal is before us complaining that the

Tribunal did not grant any opportunity of hearing to the Petitioner / Original Respondent / Assessee.

3 The precise submission of Mr. Shah appearing in support of this Petition is that the Tribunal was aware that the Petitioner is not appearing but it proceeded on the footing that the Petitioner / Original Respondent before the Tribunal is absent despite notice.

4 Mr. Shah submits that in the application to recall this order supported by an affidavit, the Petitioner specifically invited the attention of the Tribunal to the fact that no notice of hearing of the Appeal before the Tribunal was ever served on this Petitioner. The ex-parte order deserves to be recalled and it is pointed out in that application for recall that the notice for date of hearing before the Tribunal was never received. The reason for the same is that the Petitioner was previously known as M/s Universal Luggage Manufacturing Company Limited, which was having its factory at Satara in Maharashtra. M/s Universal Luggage Manufacturing Company Limited was merged with the present Petitioner with effect from 1st April, 2007. The factory at Satara

was sold in the financial year 2008-2009. The Central Excise Registration for that factory was surrendered way back and in that financial year. Therefore, there cannot be any question of notice of hearing being served on the factory which is non-existent on 23rd August, 2011. It is in these circumstances that the Petitioner / Original Respondent was unaware of the ex-parte order and prayed for recall.

5 Our attention is invited to page 75 of the paper book and which is a copy of the restoration application supported by an affidavit of one of the officials who was aware of the facts and circumstances and able to depose to the case. That affidavit copy of which is at pages 72 to 74 of the paper book has been perused by us.

6 We have also perused the order dated 17th October, 2014 passed by the Tribunal as also the earlier and initial order of 23rd August, 2011.

7 The Tribunal unmindful of the contents of the restoration application proceeded to deal with it as if it is seeking

to rectify certain mistakes in the initial order. The application to rectify the mistake was made by the Revenue whereas the Petitioner's application was seeking recall of the ex-parte order. In a complete state of confusion, the Tribunal passed the order on the rectification applications but did not consider the essential prayer of the Petitioner for restoration.

8 It is in the above circumstances that we are unable to agree with Mr. Jetly that either the Writ Petition is filed belatedly or the Petitioner can be blamed for not remaining present despite service of notice of hearing.

9 We find that to render substantial justice and since this is a case of total non-application of mind, the Petition deserves to succeed. The initial order dated 23rd August, 2011 allowing the appeals of the Revenue ex-parte deserves to be quashed and set aside. It is accordingly quashed and set aside. The Appeals of the Revenue are restored to the file of the Tribunal for a decision afresh on merits and in accordance with the law. Mr. Shah, on taking instructions states that the notice of hearing of the Appeals served on the present Petitioners' advocate at Mumbai would be

accepted without insistence on a personal service on the Petitioner if that notice indicates date of hearing of the Appeals by the Tribunal, the Petitioner will make all arrangements for their appearance either through their officials or legal representative / advocate.

10 The Writ Petition is allowed in the above terms. The Court clarifies that it has not expressed any opinion on the merits of the case. In the light of the above, setting aside of the initial order dated 23rd August, 2011 in the two appeals namely Appeal No. E/167/2004-MUM and Appeal No. E/231/2004-MUM nothing survives in the subsequent proceedings for rectification and order in that behalf dated 17th October, 2014 is also set aside.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)