IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.12518 to 12520 of 2016
and
W.M.P.Nos.10833 to 10835 of 2016

M/s.Karan Traders
(rep.by Ajay Kaushik, Proprietor)
414-C, Manchester Towers,
Avinashi Road, P.N.Palayam
Coimbatore-641 037 ... Petitioner in W.P.No.12518 of 2016

R.Thiyagarajan .... Petitioner in W.P.No.12519 of 2016

M/s.Obli Spinning Mills(P) Ltd.,
(rep.by R.Thiyagarajan,
Managing Director)
Mettur Main Road,
Karuppanaikenpalayam,
Bhavani-638 302 .... Petitioner in W.P.No.12520 of 2016

Vs

The Joint Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu,
Salem-636 001 ... Respondent in all the W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, calling for the records comprised in Order in Original Sl.No.23/2005-CX (JC) (Denovo) dated 29.12.2015, on the file of the respondent and quash the same.

For Petitioners : Ms.D.Naveena

For Respondent : Mr.V.Sundareswaran

COMMON ORDER

Heard Ms.D.Naveena, learned counsel for the petitioners and Mr.V.Sundareswaran, learned counsel, who accepts notice for the respondent and with the consent of parties, the writ petitions are taken up for final disposal.

2. In all these writ petitions, the petitioners have questioned the order in Original passed by the Joint Commissioner, dated 29.12.2015. For the purpose of disposal of all these writ petitions, W.P.No.12520 of 2016 is taken up to lead the case.

3. The short issue which falls for consideration is as to whether the respondent/adjudicating officer could have proceeded to conclude the proceedings and pass an order in Original, without affording an opportunity to the petitioners to cross-examine two of the persons from whom statements have been recorded, which appears to be the basis for issuance of the show cause notice dated 02.01.2007. In fact, earlier, the show cause notice was adjudicated and order in Original was passed on 31.3.2008. This order was put to challenge by the petitioner, by filing an appeal before the Commissioner(Appeals), Salem. The Commissioner(Appeals), after considering the matter in detail, by order dated 8.12.2008, allowed the appeal and remanded the matter to the adjudicating officer for fresh consideration. The reason for such remand could be ascertained from the operative portion of the order, at paragraph No.7, which would run thus:

> "7. Thus, it is felt that the appellants had been deprived of the opportunity of defending their case properly, during the course of the adjudication proceedings. In view of the above hit is felt that this is a fit case for de novo consideration by the Lower Authority after supplying the appellants with all the relied upon documents and another opportunity of personal hearing to defend their case including cross-examination of witnesses as requested by the Appellants. As the main issue of demanding duty with interest from the Appellants No.1 requires de novo consideration, all the related issues like imposition of penalties on the Appellants No.1 and other Appellants No.2 and 3 in this case also call for de novo consideration."

4. Thus, from the above order it is seen that the Commissioner(Appeals) was satisfied that there was violation of principles of natural justice and that the petitioner had to be

given an opportunity to cross-examine the witnesses, as requested by them and this having not been done, the order requires to be interfered and the matter has to be remitted for denovo consideration. On such remand, the matter has been taken up by the Joint Commissioner, Salem, who has adjudicated the matter.

5. The only issue which falls for consideration in these writ petitions is as to whether the authority could have proceeded to adjudicate the matter and pass the final order, without acceding to the request made by the petitioners for cross-examination of two of the persons, from whom statements were recorded by the department, namely, V.Kumaraswamy and S.Padmanabhan. These persons are said to be job workers, who have given statements with regard to the amount charged by them for carrying on the job work. The petitioners' specific request was to cross-examine these two persons.

6. From paragraph No.8 of the impugned order it is seen that the officer has proceeded to adjudicate the matter by recording that the Consultant, who appeared on behalf of the petitioners, had not pressed for cross-examination of the other witnesses. This according to the petitioners is factually an incorrect statement, as the petitioners wanted to cross-examine those two witnesses, since the quantification made in the show cause notice was on the basis of the statements recorded from those witnesses.

7. Since a factual dispute was involved in the matter, the respondent was directed to file counter and accordingly a common counter affidavit, in all the writ petitions, has been filed and a re-joinder has also been filed, by the petitioner in W.P.No.12520 of 2016.

8. From paragraph Nos.13 and 14 of the counter affidavit it is seen that the Department had sent summons to those two persons, namely, V.Kumaraswamy and S.Padmanabhan, to appear before the authority to enable the authority to afford the petitioners an opportunity to cross-examine those two persons. However, Kumaraswamy has received the summons and did not turn up for cross-examination. But the summons sent to Padmanabhan has returned as unserved on the ground that no such person was residing in the address mentioned in the summons. Thus, the respondent department was unable to produce those two persons for cross-examination. If that be the case, then the statements recorded from them should have been eschewed by the adjudicating authority and thereafter, the adjudicating officer ought to have proceeded with the adjudication. But, from a reading of the impugned proceedings, it is seen that the adjudicating authority has not eschewed the statements given by those two persons and in fact, there is reference to the

statements recorded from them even in paragraph No.12 of the impugned proceedings.

9. The other angle from which the matter can be approached is that if those two persons are not available for cross-examination, then their statements could not have been relied upon and the petitioners should have been afforded an opportunity to contest the matter, without reference to those two statements. This exercise also has not been done by the adjudicating authority while passing the impugned order. That apart, the impugned order levies Central Excise duty and the quantification for the job works has also been made, relying upon the statements given by those two persons.

10. It may be true that the impugned proceedings are not solely based upon those two statements. But nevertheless, those statements having been taken into consideration and those persons not having been available for cross-examination, this Court is of the view that the matter requires to be remanded for fresh consideration.

11. Considering the fact that the respondent, the Joint Commissioner, Salem, has already decided the matter elaborately and passed the impugned order, in fitness of things, on remand, the file can be placed before some other officer of concurrent jurisdiction, who could decide the matter, without being in any manner influenced by the findings recorded in the impugned order. It is made clear that this observation is made without meaning anything adverse against the Joint Commissioner, who has passed the impugned order, but only to ensure that the principles of natural justice are fully met.

12. Accordingly, the writ petitions are allowed and the impugned order is set aside and the matter is remanded to the respondent for fresh consideration and fresh adjudication shall be made by a different officer, as observed supra and while doing so, the statements recorded from V.Kumaraswamy and S.Padmanabhan shall be eschewed. The petitioners shall appear before the adjudicating authority and co-operate in the adjudicating proceedings by advancing oral and written submissions. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Joint Commissioner of Central
Excise,
Office of the Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu,
Salem-636 001.

+3cc to Mr.S.Durairaj, Advocate Sr.33908
+1cc to Mr.V.Sundareswaran, Advocate Sr.33522

W.P.Nos.12518 to 12520 of 2016

nrjk[co]
srg 30/06/2016