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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
19.
\+ **W.P.(C) 1587/2016**

CHL LIMITED ..... Petitioner
Through: Mr Pradeep Aggarwal and Ms Divya Nagpal, Advocates.

versus

THE COMMISSIONER OF SERVICE TAX-
DELHI & ORS. ..... Respondents
Through: Mr Satish Kumar, Senior Standing counsel for Respondent Nos.1 & 3.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **24.02.2016**

CM No. 6848/2016 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 1587/2016 & CM No. 6847/2016

3. Notice. Mr Satish Kumar, Senior Standing counsel for Respondent Nos.1 and 3 accepts notice.

4. The point involved in this petition being a short one, the petition is taken up for final hearing.

5. The Petitioner received a Show Cause Notice ('SCN') dated 21st October, 2009 with regard to alleged evasion of service tax. The SCN was issued by the Commissioner, Service Tax, New Delhi. Apparently, there were no proceedings pursuant to the said SCN for some years, thereafter. In the meanwhile, the Petitioner entered into correspondence with the Commissioner (Adjudication) i.e. Adjudicating Authority (AA) in relation to the said SCN.

6. On 29th August, 2011 a hearing was held before the AA at which the Department was directed to give copies of the documents and information as sought by the Petitioner in its letter dated 20th November, 2009. This could not, therefore, be termed an effective hearing.

7. For more than three and half years thereafter no proceedings took place. A hearing was fixed before the AA on 25th May, 2015. An additional reply was submitted by the Petitioner during the course of the hearing and at further request was made for some documents. This was acceded to by the AA and a direction was issued to the Department to provide the Petitioner with the documents and information sought. What is significant as far as this hearing on 25th May 2015 was that the matter was adjourned without fixing the next date.

8. Thereafter, by a letter dated 27th May 2015, the Assistant Commissioner (Adjudication) furnished certain documents and information running into 16 pages. The Petitioner was asked to submit a written statement within one

month of the receipt of the said documents. The Petitioner submitted a further reply on 15th July, 2015. Thereafter the Petitioner received a notice dated 4th November 2015 fixing the next date of hearing on 16th November 2015 at 15:00 Hrs.

9. The hearing on 16th November, 2015 was the only effective hearing in the matter after 25th May, 2015. And, this was in respect of the SCN issued more than six years earlier on 21st October, 2009.

10. The Petitioner addressed an application dated 14th November, 2015 to the AA seeking an adjournment on medical grounds. The application was accompanied by a medical certificate which showed that Mr L. N. Malik, Chartered Accountant of the Petitioner, who was to represent it at the hearing, was indisposed. According to the Petitioner, one Mr M. L. Vashist from Mr Malik's office and Mr Ashwani Kumar, Assistant Financial Controller delivered the said letter in the office of the AA but were not informed of the adjourned date.

11. Thereafter, on 30th November, 2015, the AA proceeded to pass an *ex parte* final adjudication order confirming the demand of service tax, interest and penalty as proposed in the SCN.

12. The point being urged before this Court on behalf of the Petitioner is that the adjournment sought by the Petitioner on reasonable and valid grounds was not granted, thereby depriving the Petitioner of an effective opportunity of participating in the adjudication proceedings and presenting its version. It

is further pointed out that Mr Harinder Bansi, the Principal Commissioner, Central Excise, Delhi - I, who was the AA who passed the impugned order retired on the date of pronouncement of the impugned order i.e. 30th November, 2015 and perhaps was in a hurry to conclude the adjudication proceedings in relation to the SCN issued more than six years earlier on 21st October, 2009.

13. While the Petitioner does have an alternative remedy of filing an appeal against the impugned adjudication order dated 30th November 2015, the Court is of the view that the facts of the present case where it appears, for reasons elaborated hereafter, that the he reasonable request made by the Petitioner for adjournment was unjustifiably refused, and Petitioner was deprived of an opportunity of effectively participating in the adjudication proceedings, the Court's intervention under Article 226 of the Constitution is called for. In other words this appears to be a case of violation of the principles of natural justice.

14. Without going into the question whether the letter dated 14th November 2015 seeking adjournment was in fact delivered to the Respondent No. 2, the Court observes that with only one effective hearing having taken place prior to 30th November, 2015 i.e. on 25th May 2015, it would have not caused any serious prejudice to the Department if the request for adjournment made by the Petitioner, on account of the indisposition of its CA, supported by medical certificate, had been accommodated. After all, the SCN dated 21st October 2009 was pending adjudication for more than six years. It appears to the Court that the only reason why the Principal

Commissioner, Central Excise as AA was in a hurry to conclude the proceedings was that he was retiring on the very date he passed the impugned order i.e. 30th November, 2015. He was perhaps anxious that the SCN should not be shown as pending for over six years.

15. It is these extraordinary circumstances, that persuades the Court to exercise its powers under Article 226 of the Constitution. The Court accordingly sets aside the adjudication order dated 30th November 2015. The Court directs that the adjudication proceedings arising out of the SCN dated 21st October 2009 issued against the Petitioner will now resume before an AA, as may be designated by the Central Board of Excise and Customs (CBEC), from the stage it was prior to the passing of the impugned adjudication order.

16. Mr Satish Kumar, learned Senior Standing counsel for the Department, informs the Court that CBEC will issue an appropriate letter designating an AA, not later than two weeks from today. An intimation regarding the nomination of the new AA and the date place and time of the proceedings will be communicated by the said AA sent to the Petitioner as well as its CA Mr L. N. Malik at their respective addresses already available with the Department by Registered Speed Post at least ten days prior to the date of hearing. The Petitioner will participate in the proceedings on the date fixed and on all the dates thereafter. It is made clear that the AA will at the end of every hearing, draw up the proceedings specifying *inter alia* the next date of hearing.

17. Considering that the SCN has been pending since 21st October 2009, it is directed that the adjudication proceedings be concluded and an order passed by the AA not later than six months from today.

18. The petition and application are disposed of in the above terms.

19. Needless to mention that this Court has not touched upon the merits of the case. All the contentions of the parties on merits are left open to be urged before the AA in the adjudication proceedings.

20. Order *dasti.*

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 24, 2016
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