

Messrs Classic Exports	}	
Imports and Anr.	}	Petitioners
versus		
The Union of India and Anr.	}	Respondents

Mr. Tarun Kumar - Senior Intelligence Officer, Directorate of Revenue Intelligence present.

DATED :- APRIL 18, 2017

2. The two contentions raised by the learned senior counsel appearing for the petitioners are that firstly the respondents,

during the course of investigation, have seized certain documents, which are copies of the originals and ordinarily to be retained by the petitioners for their record. Since such documents are also seized, the petitioners could not effectively reply to the show cause notice. They would like not only to obtain the copies and which are meant for their record, but would also desire that such copies of the originals, which contain the remarks and endorsements, including the assessment orders, should be supplied to them. That would ensure that an opportunity to defend is meaningful and purposeful and not an empty formality.

3. The second contention is that there are certain officers of the Department whose statements are referred in the show cause notice and such of these officials, who are still in service of the Government should be made available for cross-examination along with some others.

4. The precise argument on this point is that the show cause notice refers not only to documents but statements of certain persons. Those statements have been recorded on various occasions and various dates. If these materials are going to be utilised and to the detriment of the petitioners, which is their serious apprehension, then, the principles of fairness, equity and

justice demand that the petitioners are provided an opportunity to test the veracity of the statements in cross-examination. That would be possible only after the entire record in such an old case is allowed to be inspected all over again.

5. This matter was placed before us yesterday and because of the apprehension that the adjudicating authority will now rush and make a final order, we posted it today after some brief arguments. We inquired from Mr. Jetly learned counsel appearing for the respondents and particularly the adjudicating body as to whether the entire record and in terms aforesaid can be inspected so that the petitioners have an opportunity and equally a satisfaction that they have fully placed their version before the authorities. Secondly, as far as the cross-examination of the officers of the Department and some other gentlemen, Mr. Jetly, on taking instructions, would make a statement that the petitioners can approach even now the adjudicating authority and request in writing for making available the officials or other persons, whose statements are referred in the show cause notice, for cross-examination. That request would be considered on its own merits and in accordance with law. But, in no case, this court should interfere at this stage in writ jurisdiction as the entire attempt is to delay and prejudice the ongoing adjudication. All

the more when except the petitioners, others have no such grievance.

6. After hearing both sides, we are of the opinion that the matter is brought at a stage wherein the adjudication is incomplete. Though several parties, to whom the show cause notice is addressed, appeared, made their submissions and the files are closed for orders, admittedly, no adjudication order is passed. That is why we suggested to Mr. Jetly as to why even now the petitioners cannot be allowed to inspect the records and particularly the seized documents and other papers. On taking instructions from the officials present in court, Mr. Jetly states that on Friday i.e. 21st April, 2017 at 11.00 a.m., the petitioners can attend the office of the Directorate of Revenue Intelligence, Marine Lines, Mumbai and inspect all the records pertaining to the present adjudication. The files would be made available for such inspection and in the event a request is made to handover copies thereof, on payment of the usual charges and expenses, such copies would be handed over. We accept the statements made by Mr. Jetly on instructions, as undertakings given to this court.

7. Insofar as the request to make certain officials available, whose statements are referred in the show cause notice, we grant

liberty to the petitioners to make an application setting out the names of the officials and their connection with the adjudication. Similarly, some other persons are also stated to have set out certain facts and their statements are recorded by the authorities. The copies thereof be supplied to the petitioners and a request can be made by the petitioners to summon them for cross-examination. All such requests be duly noted and considered on their own merits and in accordance with law. We clarify that while dealing with the petitioners requests as above, the authorities should not be influenced by the communication at page 61 of the paper book. We do not wish to express any opinion on the rival contentions as far as the merits are concerned. We also need not interfere further and with the ongoing adjudication as that would prejudice both sides.

8. With the above directions, we dispose of this writ petition.

(PRAKASH.D.NAIK, J.)

(S.C.DHARMADHIKARI, J.)