IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CENTRAL EXCISE APPEAL NO.12/2016

The Commissioner Central Excise, Commissionerate Nagpur-II, Nagpur
...Versus...
M/s. L.V. Construction & Company, Nagpur - 440003

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri S.N. Bhattad, Advocate for appellant

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.
DATE : 13.04.2017

By this central excise appeal, the Commissioner of Central Excise, Nagpur has challenged the order of the Customs, Excise and Service Tax Appellate Tribunal, dated 27.11.2015, setting aside the order of the Commissioner, rejecting the declaration, dated 31.12.2013 tendered by the respondent – assessee.

The respondent – assessee had in pursuance of Notification No.10/2013-ST, dated 13.5.2013 filed VCES-1 declaration form stating therein that no enquiry, investigation or audit was pending against the respondent – assessee, as on the first day of March, 2013. The learned Commissioner upheld the case of the Revenue that the declaration was liable to be rejected under the provisions of Section 111 of the Finance Act, 2013 as an enquiry was initiated against the respondent – assessee by the

DGCEI and documents were sought from the respondent – assessee by the DGCEI vide communication dated 19.2.2013. The order of the Commissioner upholding the decision of the Revenue was challenged by the respondent – assessee before the Customs, Excise and Service Tax Appellate Tribunal. The Tribunal, on an appreciation of the documents specially the communication of the DGCEI, dated 19.2.2013 held that on the date on which the respondent – assessee filed the declaration, there was no enquiry pending against it. The decision of the Tribunal is challenged by the Commissioner of Central Excise, in this appeal.

The learned Counsel for the appellant has relied on the communication of the DGCEI, dated 19.2.2013 that was served on the respondent – assessee, as also the show-cause-notice, dated 17.10.2014 to submit that an enquiry was pending against the respondent – assessee on the date, on which the respondent - assessee had made the declaration. It is stated that the declaration made by the respondent – assessee was palpably false and hence, the Commissioner had rightly held that the Revenue was justified in holding that the declaration was liable to be rejected as an enquiry was initiated against the respondent – assessee by the DGCEI. It is submitted that a similar view has been expressed by the Hon'ble Supreme Court in the case of ***Union of India and others...Versus...Charak Pharmaceuticals (India) Ltd.***, reported in ***(2003) 11 SCC 689***.

On hearing the learned Counsel for the appellant and on a perusal of the orders of the Commissioner and the Tribunal as also the relevant Circulars and the communication of the DGCEI dated 19.2.2013, it appears that there is no scope for interference with the order of the Tribunal in this appeal. The Board Circular, dated 25.11.2013 clarifies that in cases where the documents like the balance-sheets, profit and loss account etc. are called for, by the Department in the enquiries of roving nature, while quoting the authority of Section 14 of the Central Excise Act in a routine manner, the Commissioner concerned would be entitled to take a view on merit, taking into account the facts and circumstances of each case, as to whether the enquiry is of roving nature or whether the provisions of Section 106 (2) of the Act are attracted to such cases. It appears on a reading of the communication served by the DGCEI on the respondent – assessee, dated 19.2.2013, by making a reference to Section 14 of the Central Excise Act that the respondent – assessee was asked to send to the office of the DGCEI the copies of the balance-sheets for the financial years 2008-09 to 2011-12, a copy of the agreement/work order of each of the contractors involving contract value of more than Rs.50,00,000/-, details of payments received from each of the contractors involving the contract value of more than Rs.50,00,000/- and a copy of ST-3 Returns filed with the Service Tax Department for those years. On a reading of the communication, dated 19.2.2013, served by the DGCEI on the respondent – assessee, the Tribunal rightly held that by the said communication, the assessee was called by the DGCEI to produce the documents like the balance-sheets, profit and loss account and all the other documents that are mentioned in the said communication, in the enquiry of roving nature without giving any details of any particular transaction or particular matter with regard to which the enquiry was sought to be made. Only by quoting the provisions of Section 14 of the Central Excise Act in the communication dated 19.2.2013, the DGCEI asked the petitioner to produce almost all the documents pertaining to the financial years 2008-09 to 2011-12 without mentioning any reasons for seeking the said documents or without seeking any particular documents pertaining to any particular query. By relying on the Board Circular, dated 25.11.2013 that is clarificatory in nature, the Tribunal rightly held that the adjudicating authority – Revenue should have accepted the declaration filed by the respondent – assessee. While holding so, the Tribunal relied on the two judgments of the Hon'ble Supreme Court that the Board Circulars are binding on the departmental officers and as per the Board Circular, dated 25.11.2013, the declaration made by the respondent – assessee was liable to be accepted. We do not find any illegality in the order of the Tribunal so as to admit the appeal. The appellant cannot rely on the show-cause-notice, dated 17.10.2014 to substantiate the case of the appellant as the said show-cause-notice was served on the respondent - assessee after the assessee had tendered the declaration on 31.12.2013. While upholding the order of the Tribunal, it would be necessary to hold that the reliance placed by the appellant on the judgment of the Hon'ble Supreme Court in the case of ***Charak Pharmaceuticals (India) Ltd.*** (Supra) is not well founded. The judgment in the case of ***Charak Pharmaceuticals (India) Ltd.*** is distinguishable on facts. In that case, after reading the communication, dated 26.7.1995, the contents of which are not reproduced in the judgment, the Hon'ble Supreme Court held that the High Court fell in error in holding that the said communication tantamounts to a show-cause-notice or was in the nature of a show-cause-notice. In our view, the said judgment would not be of any assistance to the case of the appellant.

Since the order of the Tribunal is just and proper, we dismiss the Central Excise Appeal with no order as to costs.

JUDGE **JUDGE**

Wadkar