IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.04.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.2068 and 2870 of 2007

C.M.A.No.2068 of 2017

The Commissioner of Customs and Central Excise,
Coimbatore. .. Appellant/ Respondent

versus

1.M/s.Lakshmi Industries - Unit-I

2.Mr.D.Mohanraj, Partner
(Lakshmi Industries - Unit-I)

3.Mr.D.Suyaraj, Partner
(Lakshmi Industries - Unit-I)

Respondent 1 to 3 having office at
No.138, Sundakamuthur Road,
Coimbatore-26.

4.Mr.S.Suresh, Directorate
(Sakthisundar Acids (P) Ltd.,
No.82 B, SIDCO Industrial Estate,
Kurichi.

5.Mr.R.Manohar, Proprietor,
(M/s.Valarmathi Agencies)
7-922, Asha Street, Ananthpur,
Goothy 515 401. .. Respondents/Applicants

Prayer: Civil Miscellaneous Appeal is filed under Section 35G of the Central Excise Act, 1944, against the order, dated 24.10.2005, in Appeal Nos.E/PD/220/05 to E/PD/224 & E/413/2005 to E/417/2005, on the file of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai.

C.M.A.No.2870 of 2007

The Commissioner of Customs
and Central Excise, Coimbatore. .. Appellant

versus

1.The Customs, Excise and Service Tax Appellate Tribunal,
Sough Zonal Bench,
Shastri Bhavan Annex,
26, Haddows Road, Chennai-6.

2.M/s.Jai Ganesh Agencies,
34/3, 1st Floor, Benakeswara Complex,
Davangere 577 001.

3.Shri.M.Elango Muthuraj Agencies,
88/2, Dada Buildings, Chowkipet,
Davangare 577 001.

4.Shri.S.U.Pandian,
Proprietor, M/s.Sathya Agencies,
1st Floor, Srisaila Nilaya,
Kumbhara Veedhi,
Shimoga 577 002. .. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 35G of the Central Excise Act, 1944, against the order, dated 02.06.2006, in Final Order Nos.482 to 484 of 2006, on the file of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Shastri Bhavan (Annexe), Chennai.

For Appellant : Mr.A.P.Srinivas

COMMON JUDGMENT
(Judgment of the Court was made by S.MANIKUMAR, J)

Civil Miscellaneous Appeal No.2068 of 2007, is directed against the order, dated 24.10.2005, in Appeal Nos.E/PD/220/05 to E/PD/224/05 & E/413/2005 to E/417/2005, on the file of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, remanding the matter to the Commissioner of Central Excise, Coimbatore, for fresh adjudication in accordance with law and to follow the principles of natural justice.

2. Civil Miscellaneous Appeal Mo.2870 of 2007, is directed against the order, dated 02.06.2006, in Final Order Nos.482 to 484 of 2006, on the file of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Shastri Bhavan (Annexe), Chennai, by which, while setting aside the order, dated 25.02.2005, of the Commissioner of Central Excise, Coimbatore, the Tribunal has directed the Commissioner of Central Excise, Coimbatore, to hear the matters afresh and take a decision thereon, in accordance with law, observing the principles of natural justice.

3. M/s.Jai Ganesh Agencies, Davanagere, M/s.Muthuraj Agencies, Davangere and M/s.Sathya Agencies, Shimoga are the dealers of M/s.Lakshmi Industries, Coimbatore. Alleging that there was a clandestine removal of “detergent cakes” during 1997-98 to 2000-01, by M/s.Lakshmi Industries (Unit- I), Coimbatore, 1st respondent herein, the Commissioner of Central Excise demanded duty of Rs.7.5 Crores and also imposed penalty of equivalent amount, under Section 11 AC of the Central Excise Act. A fine of Rs. 10,000/- was also imposed in lieu of confiscation of goods seized from their premises. Against which, the 1st respondent filed an appeal in Appeal No.E/413/2005 on the ground of denial of natural justice. Aggrieved by the penalties imposed by the Commissioner, the other respondents have filed appeals in Appeal Nos.E/414/2005 to E/417/2005.

4. Before the Tribunal, the respondents have contended that in spite of repeated requests, some of the documents relied on, in the respective show cause notices were not supplied. Though on 23.11.2004, respondents' counsel personally met the Commissioner with a request in writing for supply of copies of ‘weigh bridge slips’ of M/s. Raja Weigh Bridge, which were the relied on documents, they are yet to be supplied to the noticees. The Commissioner, vide letter, dated 25.11.2004, directed the respondents to approach the Directorate General of Central Excise Intelligence (DGCEI) for the said documents. But the Director General has directed them back to the Commissioner, for receiving the said documents. On 21.2.2005, the respondents through their counsel once again approached the Commissioner with a written request for supply of the above documents.

5. Before the Tribunal, it was also contended that though the appellants wanted to cross-examine persons from whom incriminating evidences were gathered by the departmental investigators, the request was not acceded to by the Commissioner. Considering the facts and circumstances of the case, CESTAT, South Zonal Bench, Chennai, vide order, dated 24.10.2005, held as follows:

> "5. After examining the records and the above submissions, we find that there is no dispute of the fact that weigh bridge slips recovered from certain transporters were relied upon by the department to allege clandestine removal of goods against M/s.Lakshmi Industries. There is no evidence of any of these documents having so far been supplied to the party. Again, it is an admitted fact that the non-relied-upon documents were returned only after the impugned order was passed. It is claimed by the appellants that they want to rely upon these documents in support of their defence against

the allegations raised in the SCNs. It is not in dispute that the noticees could not cross-examine any of the witnesses named by them. We, however, would not give a clean chit to the noticees inasmuch as, apparently, they have not sufficiently co-operated with the adjudicating authority. In any case, the rule of natural justice demands that an effective opportunity be given to the noticees to counter the allegations in the SCNs and to substantiate their defence. Therefore, in the facts and circumstances, which we have already noted, we are inclined to remand the case to the Commissioner for de novo adjudication.

6. A jurisdictional question was also raised before us. It was pointed out by Id. counsel that the Commissioner of Central Excise at Salem was dealing with a demand of duty raised by the department on another unit of M/s.Lakshmi Industries at Salem and that the demand notices issued to the Coimbatore and Salem units were based on common evidentiary materials. On this basis, the Commissioners at Coimbatore and Salem were requested to keep the matters in abeyance till a common adjudicating authority was appointed by the CBEC in respect of the units of M/s.Lakshmi Industries. Counsel claim that the Commissioner at Salem conveyed their request to the Board and was awaiting the Board's orders. The present grievance is that the Commissioner at Coimbatore did not heed the above request of the party?and proceeded to adjudicate the disputes relating to the Coimbatore unit. We have considered this aspect also. It appears from the records that the evidence relied on by the department to demand duty from the Salem unit was not relied on for demanding duty from the Coimbatore unit. The Revenue's case appears to be that, ever without clubbing the values of clearances of the two units, the Coimbatore unit easily exceeded the aggregate value of clearances of Rs.3 Crores, the limit prescribed by the relevant SSI Exemption Notification for the period from 1997-98. In the circumstances placed before us, we do not find sufficient reason to entertain the jurisdictional grievance of the assessee. However, having noted that the reference made by the Salem Commissioner is pending with the Board, we are of the view that the Board may examine the question (whether, in the facts of the cases of Coimbatore and Salem units of M/s.Lakshmi Industries, it is desirable to have a common adjudicating authority) and take an

appropriate decision.

7. For the reasons which we have already recorded, we set aside the impugned order and remand the case to the Commissioner of Central Excise, Coimbatore for fresh adjudication in accordance with law and the principles of natural justice. For the removal of any doubt, We direct that, before adjudication of the case, reasonable opportunities be given to the noticees to obtain copies of the weigh bridge slips, receive back all the non- relied-upon documents, file replies to the SCNs, cross-examine the witnesses and be personally heard. Having noted the high stake involved in the case, we make it clear,in the interest of the revenue, that the order of adjudication be passed in the case within a period of 3 months from the date of receipt ofcertified copy of this order.

All the appeals stand allowed by way of remand."

6. M/s. Jai Ganesh Agencies, Davanagere, M/s.Muthuraj Agencies, Davangere and M/s.Sathya Agencies, Shimoga, dealers of M/s.Lakshmi Industries, Coimbatore, were issued with two show cause notices, 66/2001, dated 08.05.2001 and 65/2002, dated 23.08.2002, with a duty liability of Rs.33,483/- and Rs.7,54,64,454/-, demanded under Section 11 A(1) of CEA, 1994, with proposals for mandatory penalty, under Section 11 AC, interest demanded under Section 11AB and with penalty proposed under Rule 173Q & 209A and 210 of Central Excise Rules, 1994 and to confiscate the seized goods valued at Rs.70,270/-. The above show cause notices have been adjudicated by the Commissioner of Central Excise, Coimbatore, vide Order-in-Original No.02/2005, dated 25.02.2005, which confirmed the duty liability of both Rs.33,483/- and Rs.7,54,64,454/-, with imposition of equal mandatory penalty of Rs.33,483/- and Rs.7,54,64,454/-, under Section 11 AC of the Central Excise Act, 1944, besides imposing penalties, under Rules 173Q. and 209A of the Central Excise Rules, 1994 with confiscation of the goods seized with redemption fine. Aggrieved by the same, Excise Appeal Nos. 1120, 1125 and 1126 of 2005 and upon considering the grounds raised thereon, the CESTAT, Chennai, vide order, dated 02.06.2006 in Final Order Nos.660 to 662 of 2002, while setting aside Order-in-Original No.02/2005, dated 25.02.2005, directed the concerned Commissioner of Central Excise to hear the matters afresh and take a decision thereon, in accordance with law, observing principles of natural justice, by giving adequate opportunity of being heard to the appellants therein expeditiously.

7. Against the order dated 24.10.2005, in Appeal Nos.E/PD/220/05 to E/PD/224/05 fit E/413/2005 to

E/417/2005, on the file of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, Civil Miscellaneous Appeal No.2068 of 2007, has been filed, on the following substantial questions of law,

(1) Whether the Tribunal had disposed of the application to dispense with for pre-deposit in the manner known to law?

(2) Is not Pre-deposit of the impugned duty an essential pre-condition for numbering and maintaining the appeal?

(3) Whether the tribunal is right in casually dispensing with the pre-deposit by stating in one line that accordingly after dispensing with pre-deposit, we proceed to deal with the appeals?

(4) Whether the learned Tribunal was right in setting aside the impugned order on the ground of violation of principle of Natural justice sustainable in view of the repeated Supreme Court judgments holding that violation of principles of natural justice per se cannot be a ground to set aside an order, unless it is shown that such violation has resulted in prejudice?

(5) Whether the Tribunal was right in holding that non-supply of copies of Weigh Bridge slips was violation of natural justice without a finding as to whether such a non-supply had caused any prejudice?

(6) Whether the failure to supply certain non-relied up on documents held to have been violative of principles of natural justice by the learned Tribunal is sustainable in law?

8. Against the order, dated 02.06.2006, in Final Order Nos.482 to 484 of 2006, on the file of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Shastri Bhavan (Annexe), Chennai, Civil Miscellaneous Appeal No.2870 of 2007, has been filed, on the following substantial questions of law,

(1) Whether the Hon'ble Supreme Court in the case of Anil Chemicals and Industries Ltd., v. CCE reported in 2005 (183) ELT A31 (SC), has held that the Tribunal must decide the matter on merits on material available before it, whether the Hon'ble Tribunal is right in remanding the matter to de novo adjudication on the ground of violation of the principles of natural justice especially when the assessees themselves have not availed of the opportunity granted to them for a period of 2 years?

(2) While the Hon'ble Supreme Court in the case of State of Punjab v. Bhag Singh reported in 2004 (164) ELT 137 (SC) has held that the first court of appeal ought to have re-appreciated the

entire evidence on record independently and returned its findings objectively as regards the guilt or otherwise, whether the Hon'ble Tribunal is right in remanding the case to its original jurisdiction on the ground of violation of principles of natural justice when both the documents relied on and the documents not relied on in the show cause notice, have been released to the assessees?

(3) When the Hon'ble High Court, Chennai has held in the case of S.Hedayatullah v. GOI reported in 1981 (8) ELT 672 (Mad) that the plea of violation of the principles of natural justice could not be mechanically applied, whether the decision of the Hon'ble Tribunal to remand the case to its original jurisdiction is not a mere mechanical conclusion without appreciating the enormity of the evidences available on record?

(4) While the Hon'ble Tribunals, Bangalore in the case of Gulabachand Silk Mills P Ltd., v. CCE reported in 2005 (184) ELI 263 and the Hon'ble Tribunal, Delhi in the case of Paras Laminates (P) Ltd., reported in 2004 (176) ELT 656 in the similar facts and circumstances of the cases, have categorically held no violation of the principles of natural justice, whether the conclusion of the Hon'ble Tribunal in the present case to remand the case on the ground of violation of principles of natural justice, is not patently perverse?

9. Supporting the above substantial questions of law, the Commissioner of Customs and Central Excise, Coimbatore, has raised various grounds, in the above Civil Miscellaneous Appeals.

Heard the learned counsel for the appellant and perused the materials available on record.

10. Natural justice relating to a show-cause notice includes furnishing of various documents and materials relied on by the authorities in the show- cause notice. Unless copies of those documents are furnished, person against whom accusation is made, cannot be expected to give an effective reply, which forms part of the principles of natural justice. Reference can be made to a decision of the Hon'ble Supreme Court in Sahi Ram v. Avtar Singh reported in 1999 (4) SCC 511, wherein, at Paragraph 13, held as follows:

> "13. The Central Government will, therefore, give a show-case notice to the respondent as above-stated (with a copy to the appellant) setting out all the factual material relied upon against the respondent by the State

of Haryana in his cancellation order dated 27.4.1984 and the material relied upon by the Central Government in its order dated 24.11.1984. The show-cause notice will be accompanied by copies of all such documents as were relied upon against the respondent by the State of Haryana and by the Central Government. After receiving the explanation of the respondent and the objections of the appellant to the said explanation of the respondent and the rejoinder of the respondent, if any thereto, the? Central Government will give a hearing to the respondent and to the appellant, and will pass a reasoned order and submit the same to this Court within four months from today, alter communicating the same to the appellant and the respondent and the State of Haryana. The Central Government shall also decide whether the breaches and irregularities were committed by the respondent or by Shri R.L.Sharma. The aggrieved parties can file objections thereto thereafter in this Court."

11. In Natwar Singh v. Director of Enforcement reported in 2010 (13) SCC 255, the Hon'ble Supreme Court, at Paragraph 31, held as follows:

"31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute."

12. Where a Statement is relied on, in the adjudication proceedings and if the noticee makes a request for cross-examination of the person whose statement is relied on in the show cause notice, the same has to be furnished. During investigation, a statement

can be fortified by collection of corroborative evidence, so that the corroborative evidence support the case of the department* But the person, against whom, accusation is made, based on the document/statement, should be furnished with the said document/statement, so as to enable him to cross-examine the person, from whom, the statement is recorded.

13. Upon considering the provisions in the Central Excise Act and the submissions of the learned counsel for the parties, we do not find that there is any manifest illegality or irregularity in the order impugned in the instant Civil Miscellaneous Appeals. Substantial questions of law are answered against the revenue. Hence, the Civil Miscellaneous Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

skm
To

The Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhavan Annexe,
1st Floor, No.26, Haddows Road,
Chennai 600 006.

+1cc to Mr.A.P.Srinivas , Advocate SR.No. 30100
+1cc to Mr. M.N.Bharathi, Advocate SR.No. 30429

C.M.A.Nos.2068 and 2870 of 2007

A.SK(05/02/2019)