IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8529 OF 2019

Man-Made Spinners (India) Limited. … Petitioner.
V/s.
The Union of India and another. … Respondents.

Mr. Shriram Shridharan with Mr.Kartik W. i/b. PDS Legal for the Petitioner.
Mr. Pradeep S. Jetly with Mr.Jitendra B. Mishra for the Respondents.

CORAM : M.S. SANKLECHA AND NITIN JAMDAR, JJ.

DATE : 14 August 2019.

P.C. :

At the request of the parties, the petition is taken up for final disposal at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the orders dated 18 November 2016 and 25 May 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal). The impugned order dated 18 November 2016 allowed the Revenue's appeal under the Central Excise Act, 1944 (Act) on merits and the impugned order dated 25 May 2018 rejected

the petitioner's Misc. Application for recall/rectification of the order dated 18 November 2016. Both the impugned orders were admittedly passed without hearing the petitioner.

3. Briefly, the facts leading to this petition are that the Commissioner (Appeals) allowed the petitioner's appeal and directed a refund of Rs. 45 lakhs in cash to it. Being aggrieved with the above order the Revenue filed an appeal to the Tribunal bearing Appeal no. E/3318 of 2006. This Appeal was heard on 18 November 2016 and allowed on merits on the same date, in the absence of the petitioner. On learning of the order dated 18 November 2016, in view of recovery proceedings, the petitioner filed an application for recall of the order dated 18 November 2016 to the Tribunal bearing application No. E/ROA/93146 of 2017. On 25 May 2018, the application was dismissed by the Tribunal on the ground that its order dated 18 November 2016 in appeal was an order on merits. Thus no rectification application is maintainable for recall. This order was again passed without hearing the petitioner.

4. The grievance of the petitioner is that it had no notice of any hearing being granted by the Tribunal before passing the final order dated 18 November 2016 in an appeal filed by the Revenue. This is for the reason that the hearing notice was served by the registry of the Tribunal upon the petitioner on its old address and

therefore the petitioner had no notice of hearing. The petitioner learnt about the impugned order dated 18 November 2016 only when the recovery notice, consequent to the above order was served upon the petitioner at its new address. This led the petitioner to file Misc. Application on 11 December 2017 for recall/rectification of the order dated 18 November 2016 wherein the petitioner, in turn, has stated the fact that the petitioner has not received notice of hearing which led to passing of order dated 18 November 2016. Thus the petitioner was unrepresented as the notice had been sent by the Registry to the earlier address of the petitioner and not to the present/current address of the petitioner. In the application for recall/rectification, the petitioner has specifically stated that no notice of hearing was ever received by the petitioner as it appears that the notice was sent at the old address of the petitioner and the new address was specifically stated therein. The application for recall/rectification was supported by an affidavit of the petitioners' Director. No notice was being served upon the petitioner as is evident from the envelope containing notice of hearing sent by the registry of the Tribunal bearing the old address of the petitioner was received back with endorsement “left address”. In spite of the above, the Tribunal by the impugned order dated 25 May 2018 dismissed the petitioner’s application for recall/rectification without hearing the petitioner. Having ignored the fact that notice of hearing was not served upon the petitioner, the impugned order rejected the recall/rectification application of the Petitioner on the ground that the order dated 18 November 2018 was passed on merits and, therefore, no rectification of the said order could be granted. In this view of the matter, at no stage of the appellate proceedings before the Tribunal the petitioner was heard before the impugned orders were passed. It is pertinent to note that this nonattendance on the part of the petitioner was only because the petitioner did not receive the hearing notice and not because of any deliberate default and/or design on the part of the petitioner.

5. Mr. Jetly, learned counsel appearing for the respondents submits that the impugned order of the Tribunal dated 25 May 2018 on rectification application cannot be found fault with, as the order being sought to be recalled was an order dated 18 November 2016 on merits. So far as the order dated 18 November 2016 is concerned, it is an order passed on merits. Therefore, the remedy of the petitioner, if aggrieved, is to file a statutory appeal under Section 35G of the Act to this Court. In these circumstances, this petition should not be entertained.

6. It is an undisputed position before us that both the impugned orders dated 18 November 2016 and 25 May 2018 have been passed in the absence of the petitioner. This non-representation of the petitioner undisputedly was because notice of hearing issued

by the registry of the Tribunal was sent to the old address and not the correct address. Thus, the petitioner had no notice of the fact that the Revenue's appeal was scheduled for hearing on 18 November 2016. Therefore, unrepresented. This resulted in Tribunal passing the impugned order dated 18 November 2016 allowing the Revenue's appeal without having served any notice of hearing upon the petitioner. This only because the notice was served at an incorrect address, more particularly when the Revenue served the recovery notice, consequent to the order dated 18 November 2018 at the correct address. Thus being aware of the correct address, the Respondents ought to have informed the Registry and ensured proper service. Similarly the application for recall/rectification of the order dated 18 November 2016 was made by the petitioner in 2017. In its application the petitioner had specifically given its new address. In spite of the above, the notice of the hearing was not served at the existing address of the petitioner by the Registry leading to order dated 25 May 20188 without hearing the petitioner. Thus we find that both the impugned orders dated 18 November 2016 and 25 May 2018 of the Tribunal are in breach of principles of natural justice. The process of taking decisions having civil consequences include in it certain requirements such as an opportunity to party to put up its case. This is absent in respect of both the orders. Therefore we exercise our extra ordinary jurisdiction under Article 226 of the Constitution by not relegating the petitioner, in the peculiar facts of this case, to the remedy of appeal provided under the Act.

7. In the above view, we set aside the impugned orders dated 18 November 2016 and 25 May 2018 of the Tribunal. We direct the Tribunal to take up the Revenue’s Appeal No.E/3318/06 for final disposal after hearing the parties. In the above circumstances, we direct the Tribunal to put up the Revenue's Appeal No. E/3318/06 for direction on 9 September 2019. On the above date, the petitioner would personally appear before the Tribunal and thereafter the appeal of the Revenue would be fixed and heard by the Tribunal on the date convenient to it.

8. Writ petition is allowed in the above terms.

NITIN JAMDAR, J. M.S. SANKLECHA, J.