IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.23985 of 2004
and
W.M.P.No.1197 of 2005

M/s.Govardhan Spinners Ltd.,
Registered office: Plot No.12,
Bharani Colony,
Door No.4, Kannammal Street,
Saligramam,
Chennai 600 093,
represented by its Executive,
G.Revathy .. Petitioner

Vs.

The Commissioner Central Excise,
Central Revenue Building,
Beebikulam,
Maduai-625 002. .. Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records comprised in Order in Original No.2/2004 dated 29.6.2004, on the file of the Commissioner of Central Excise, Madurai / Respondent, quash the same and consequently direct the respondent and grant permission for cross examination of witnesses and provide time for filing of replies and give an opportunity of hearing before passing an adjudication order in SCN No.V/52/15/15/2001, dated 19.9.2002.

For Petitioner : Mr.R.Bharanidharan
For Respondent : Mr.T.Pramodkumar Chopda
Senior Panel Counsel

ORDER

One of the main grounds raised in the present writ petition, challenging the order in original No.02/2004 passed by the Commissioner, Central Excise, Madurai, is that the order is in violation of the principles of natural justice, since the petitioners were not given an opportunity to cross examine the witnesses.

2.The learned counsel for the petitioners submitted that there are about 50 witnesses, who are required to be cross examined and though he has given a letter dated 24.03.2003 and 26.05.2003 to the respondents seeking permission to cross examine these witnesses, the respondent had neither granted permission nor rejected the same, but had passed the impugned order. Hence, the learned counsel for the petitioners submitted that an opportunity to cross examination should be granted to them.

3.The learned Standing Counsel for the respondent submitted that various opportunities to file their reply as well as the personal hearing was extended to the petitioners and inspite of the same, he has not availed these opportunities. Since the order was passed after 15 months from the show cause notice and the entire period of 15 months was only at the instance of the petitioners, it can only be said that the petitioners were given sufficient opportunity and therefore it will not amount to violation of the principles of natural justice.

4.A perusal of the counter affidavit filed by the Deputy Commissioner of Central Excise on behalf of the respondent herein, touching upon this aspect, reads as follows:

> "10. The allegations in paragraph 3 are denied. None of the petitioners filed reply despite being given sufficient opportunity to put forth their defense. Instead, the petitioners deliberately attempted to delay the adjudication proceedings in the following manner. The show cause notice calling upon the petitioner to reply within a period of 30 days was acknowledged by the petitioner on 20.09.2002. In their letter dated 18.10.2002, the petitioner requested for extension of time for two months to reply. The said request was accepted and extension of time for two months to reply was granted till 16.12.2002. The petitioner, however, in their letter dated 14.12.2002 requested further time up to 31.03.2002 to file their reply. Since their request for extension of time was acceded to earlier, further time was granted upto 30.12.2002 only. By another letter dated 28.12.2002, the petitioner requested for another six months time to file reply citing the reasons that the case records were voluminous. The request was considered but extension of time was restricted to 7.2.2003. As already sufficient time was granted the petitioner instead of filing reply, chose to send a letter dated 5.2.2003 requesting to grant fourth time extension for five more months even to file reply on the ground that some of the statements were obtained under duress. As the

petitioner had been granted sufficient time to reply, no more extension was given and a personal hearing was fixed before taking up the adjudication. Accordingly, a communication was sent to the petitioner asking to appear for hearing before the respondent on 26.3.2002. The petitioner by their letter dated 24.3.3003 informed that the reply was under preparation. Since the relied upon documents were voluminous they were not able to reply in time with an indication to cross-examine some of the witnesses, but list of persons who were to be cross examined were also not given, and the petitioner sought for five more months time to file reply. As the petitioner was already granted time for 6 months to file reply, it was decided not to grant any further time. However, they were afforded one more opportunity for personal hearing on 23.04.2003. Instead of availing the opportunity, the petitioner by their letter dated 21.04.2003 intimated that they were in the process of preparing the reply and would submit the same shortly. Thereafter an opportunity of personal hearing was fixed on 27.05.2003. The petitioner sent a letter dated 26.095.2003 alleging that the statements relied in the notice had been obtained by coercion and threat and only after cross examining the witnesses, the petitioner would be in a position to comment on the genuineness of the transactions. Fourth opportunity for personal hearing was granted on 03.07.2003. In spite of acknowledging the communication on 21.06.2003, the petitioner did not attend personal hearing. However, a last opportunity was given by fixing personal hearing on 1.1.2004 which was almost 15 months from the date of issue of notice. But the petitioner did not respond. Thereafter another opportunity of personal hearing was given on 11.5.2004. The petitioner through their counsel sent a notice dated 7.5.2004 and stated that the personal hearing intimation notice was issued without taking into consideration of the suit pending before the City Civil Court, Chennai in O.S.No.3361 of 2003 filed by Shri.K.Gopal and such notice amounts to Contempt of Court and hence their participation in the enquiry proceedings is not proper. This shows that the petitioner had not availed the opportunities allowed to defend the notice. As stated in the affidavit, had not given any tabulated statement of list of dates. The averment of the petitioner is totally and factually not in order. The petitioner were afforded adequate opportunity to defend themselves and have purposely failed to avail the same solely with an intension of dragging on the proceedings."

5.No reply statement has been filed opposing such a statement made in the counter affidavit. As such it is seen that the petitioners were granted opportunity at least on four occasions which have not been availed by the petitioners. It is also seen that the petitioners has not produced any list of witnesses whom they intend to cross examine. In these circumstances, it can be said that sufficient opportunities were extended to the petitioner, which was not availed by them, within a reasonable time.

6.In cases where there is violation of principles of natural justice, this Court would be justified in interfering with the final orders inspite of an appeal remedy available to the petitioner. Since the respondents had granted sufficient opportunities to the petitioner, it is held that there is no violation of principles of natural justice and hence setting aside the impugned order will not be proper.

7.Section 35(B) of the Central Excise Act, 1944 provides for an appeal against the impugned order to the CESTAT within a period of three months from the date of the impugned order. In the instant case, the impugned order was passed on 29.06.2004 and the writ petition came to be filed on 20.08.2004. Since the petitioners have approached this Court within the appeal time prescribed to approach the CESTAT, this Court is of the view that the petitioners can be granted an opportunity to file an appeal within a stipulated time.

8.In the light of the above observations, this writ petition stands closed with liberty to the petitioners to file an appeal before the CESTAT, under Section 35(B) of the Central Excise Act, 1944, within a period of three months from the date of receipt of a copy of this order.

9.At this juncture, the learned counsel for the petitioners submitted that the original order was lost pending the writ petition and the writ petition papers have been reconstructed. Hence, the CESTAT shall not insist on the petitioner for producing the original impugned order at the time of filing the appeal.

10.Accordingly, this writ petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

pnn

To

The Commissioner Central Excise,
Central Revenue Building,
Beebikulam,
Madurai-625 002.

+1cc Mr.R.Bharanidharan, Advocate SR.68862
+1cc Mr.T.Pramodkumar Chopda, SR.68782

W.P.No.23985 of 2004
and
W.M.P.No.1197 of 2005

VSN II(CO)

CB(11/10/2019)