



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.06.2019
Delivered on : 20.06.2019

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CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.M.A(MD)Nos.649 and 650 of 2018
and
C.M.P(MD)Nos.10822 of 2018 and 4895 of 2019

S.Varadharajan :Appellant in CMA(MD)No.649 of 2018

M/s Vedanta Limited
SIPCOT Industrial Complex
Madurai Bypass Road,
T.V.Puram P.O.,
Tuticorin 628 002.

:Appellant in CMA(MD)No.650 of 2018

.vs.

1.The Commissioner of Customs
Customs House, Tuticorin - 628 004.

2.Customs, Excise and Service Tax Appellate
Tribunal, Chennai South Zonal Bench
ShastriBhavan Annexe, First Floor,
26 Haddows Road,
Chennai 600 006.

:Respondents in both appeals

PRAYER in CMA (MD)No.649 of 2018: Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 to set aside the Final Order No.40333/2018, dated 05.02.2018 in Appeal No.C/42214/2017-DB and MISC Application No.C/MISC/41215/2017 on the file of the Customs, Excise, Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

PRAYER in CMA (MD)No.650 of 2018: Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 to set aside the Final Order No.40084/2016, dated 10.01.2016 passed in Appeal No.C/42158/2017-DB read with MISC Application No.C/MISC/41032/2017 on the file of the Customs, Excise, Service Tax Appellate Tribunal, South Zonal Bench, Chennai.



For Appellant
in both appeals

:Mr.ARL.Sundaresan
Senior Counsel for
Mr.Y.Prakash

For Respondents
in both appeals

:Mr.B.Vijaykarthikeyan

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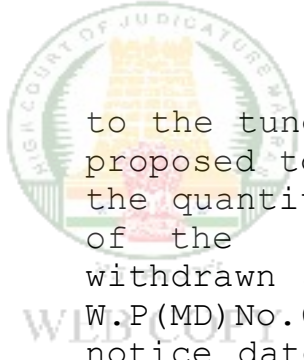
COMMON JUDGMENT

[Judgment of the Court was made by **K.RAVICHANDRABAABU, J.**]

CMA(MD)No.649 of 2018 is filed challenging the Final Order No.40333/2018, dated 05.02.2018 of the Customs, Excise and Service Tax Appellate Tribunal, Chennai. CMA(MD)No.650 of 2018 is filed against the Final Order No.40084/2016, dated 10.01.2016 by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

2.As the scope of these appeals is on a limited purpose, we are not advertent to various facts and circumstances narrated in the grounds of appeal, except to state certain relevant facts, as projected by the appellants, which are necessary for disposal of these appeals.

3.The appellant Company is engaged in the manufacture of copper products. Its finished goods are exported. The appellants had been issued advance licenses for the import of copper concentrate, by the Director General, Foreign Trade. In the year 2010, the Central Excise Authorities initiated investigation against the Company on the presumption that it had violated the conditions of the advance licenses. Several statements of its personnel were recorded by the officials of the Central Excise Department from time to time. By letter dated 21.06.2016, the Company informed the Central Excise Authorities that their computation suffered from infirmities and was premised on assumptions and presumptions. A draft show-cause notice has been prepared by the Central Excise authorities and forwarded to the office of the first respondent. Customs authorities, on perusal of the draft show-cause notice, did not agree with the allegation of misuse of advance license. However, the Central Excise authorities were still of the view that a show-cause notice was required to be issued to the Company. Hence, the appellant filed writ petition(MD)No.434 of 2015 before this Court to refrain the respondent from issuing the show cause notice. While the said writ petition was pending, the first respondent issued a Show Cause Notice No.12 of 2015 dated 13.01.2015 alleging misuse of the advance authorization scheme in respect of copper concentrate imported against the said licenses between February 2005 and May 2010. The said show cause notice proposed to demand customs duty



to the tune of Rs.3,99,60,57,592/- along with interest and further proposed to impose penalty also apart from proposing to confiscate the quantity of 77,214.034 MT of Copper. Consequent upon issuance of the said show cause notice, W.P(MD)No.434 of 2015 was withdrawn as having become infructuous. Another writ petition in W.P(MD)No.626 of 2015 was filed challenging the said show cause notice dated 13.01.2015. The Writ Court posted the writ petition along with a connected W.A(MD)No.705 of 2011 pending before the Division Bench of this Court, wherein a challenge was made on the very jurisdiction of the Central Excise Officers to conduct the investigation on the alleged customs offence. By common order dated 01.08.2018, both W.P(MD)No.626 of 2015 and W.A(MD)No.705 of 2011 were disposed of against the appellants. Special Leave Petition in SLP Nos.25142-25143/2016 was filed before the Apex Court. On 05.09.2016, the Apex Court issued notice on the SPL. Thereafter, on 21.04.2017, the Apex Court ordered that the Commissioner of Customs, Tuticorin may pass a final order and keep it in a sealed cover with further direction to list the matter in the normal course. In pursuant to the above direction of the Apex Court, the appellants were called upon by the first respondent on 05.09.2017 for personal hearing. During the course of hearing, the appellants sought for an opportunity to cross-examine the witnesses. They also sought for furnishing copies of the entire chain of correspondences between the Customs and Central Excise Department. By an order in original dated 29.09.2017, the first respondent rejected both the requests. Challenging the said order, the appellant preferred appeal before the CESTAT. The appellate Tribunal by way of an order passed dated 10.01.2018 acceded to the request made by the appellant for permitting cross-examination of the witnesses/deponents. However, as regards the request for furnishing the entire chain of correspondence exchanged between the Customs and Central Excise authorities, the Tribunal upheld the order of the first respondent and rejected the said request. Thus, both the appeals were filed before this Court by raising the following substantial questions of law:-

(i) Whether, in the facts and circumstances of the case, the respondent No.2 has traversed beyond the scope and the case made out by the Department?

(ii) Whether, in the facts and circumstances of the case, the respondent No.2 was justified in upholding the Order-in-Original dated 29.09.2017 to the extent it has rejected the request made by the appellant for supply of the entire chain of correspondence exchanged between the Central Excise and Customs authorities leading to the issuance of the Show Cause Notice No.12/2015 dated 13.01.2015, especially response of the Central Excise authorities to the letters dated 29.04.2011, 30.09.2014 and 09.01.2015, issued by the Customs authorities?

<https://hcservices.ecourts.gov.in/hcservices> Whether, in the facts and circumstances of the case, the respondent No.2 was justified in overlooking and ignoring the specific request made by the appellant



seeking cross-examination of the Department Officers who conducted the entire investigation and recorded the statements of the appellant Company's personnel?

4. Mr. AR. L. Sundaresan, learned Senior Counsel for the appellants contended that the documents sought by the appellant are very relevant for effectively participating in the enquiry and therefore, if those documents are not furnished it would cause serious prejudice and affect the interest of the appellants. He further contended that though the appellants sought for furnishing the entire chain of correspondence between the Customs and Central Excise, it would suffice if the response letter by the Central Excise Department to the letters addressed by the Customs dated 29.04.2011, 30.09.2014 and 09.01.2015 are furnished. Therefore, the learned Senior Counsel contended that conducting the enquiry without furnishing those documents is not proper.

5. Per contra, the learned Standing Counsel appearing for the first respondent contended that, by way of making the present request, the appellants want to keep the adjudication proceedings pending, when the Hon'ble Supreme Court has specifically directed the first respondent to go ahead with the adjudication. He further contended that even otherwise the request of furnishing the document is not specific and on the other hand, the appellants seek for entire file containing correspondence between Customs and Central Excise Department. He also contended that the petitioner was already furnished with 4 letters in response to the RTI application, dated 22.07.2015 and therefore, the appellants are not entitled to seek for furnishing those response letters from the Excise Department, more particularly, when those documents are not relied upon documents in the show cause notice. He further contended that the appellants have already made an application under the Right to Information Act for furnishing those documents and therefore, it is for them to work out their remedy through such application.

6. Heard both sides.

7. It is seen that the appellants are issued with the show cause notice by the first respondent. Their challenge against the said show cause notice was not successful before this Court. However, they approached the Apex Court and filed Special Leave Petition challenging the order passed by this Court in refusing to interfere with the show cause notice. Though the appellants, by way of an interim relief before the Apex Court, sought for stay of further proceedings, it is seen that the Apex Court, by order dated 21.04.2017, permitted the Commissioner of Customs, Tuticorin, namely, the first respondent herein, to pass final order in a sealed cover. Thus, from the perusal of the said interim order of the Apex Court, it is evident that the first respondent can go ahead with the adjudication process and



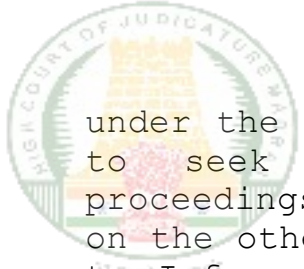
also pass the final orders and however, he has to keep such order in a sealed cover.

8. Consequent upon the said order of the Apex Court, the enquiry proceedings commenced. The appellants participated in the enquiry. They made two requests, one to cross-examine the witnesses and other one for furnishing the entire chain of correspondence between the Customs and Central Excise Department.

9. Perusal of the application filed by the appellants before the first respondent, dated 15.09.2017 would clearly indicate that the appellants wanted to obtain copies of the entire chain of correspondence exchanged between the Customs and Central Excise Authorities leading to the issuance of show cause notice and also for cross examination witnesses. There is no dispute to the fact that though the first respondent refused both requests, the Tribunal allowed the cross examination request and sustained the order of the first respondent rejecting the request for furnishing the chain of correspondence between the Customs and Central Excise Department. Therefore, the only question that arises for consideration in these appeals is as to whether the rejection of the request made by the appellants for furnishing certain documents needs to be interfered with in these appeals.

10. It is not in dispute that the appellants already filed an RTI application and obtained copies of the letters, dated 13.09.2014 and 09.01.2015 sent by the Customs Department to the Central Exercise Department. They want reply filed by the Central Excise Department in response those two letters and also another letter, dated 29.04.2011 issued by the Customs Department. When it is the specific case of the first respondent that those documents sought by the appellants are not relied upon documents in the show cause notice, we failed to understand as to how the appellants are justified in making the demand in the enquiry to furnish such of those documents which are not relied upon documents by the revenue.

11. Right to seek certain documents from the department during the enquiry, can be considered as vested right, if those documents are relied upon by the department in the show cause notice. Certainly, such of those documents, which are relied upon as the basis for issuing show cause notice, if sought for by the other side, need to be given, as a matter of following the principles of natural justice. In other words, the department cannot rely upon certain documents to proceed against the other person without furnishing copies of such documents to him, so as to enable such person to defend the enquiry effectively. At the same time, if the department has not relied on certain documents, which are
<https://hccourtscorpus.gov.in/services/> furnished by the other side, certainly, there is no vested right on the person to seek such documents in the domestic enquiry/adjudicatory proceedings. The right to seek a document



under the Right to Information Act cannot be equated with a right to seek a document in the domestic enquiry/adjudicatory proceedings, since both the rights are not on the same footing and on the other hand, they are on different context. Under the Right to Information Act, a person seeking certain documents need not give any reason for his requirement. However, if the documents sought under RTI application is either prohibited or exempted document as contemplated under Section 8 of the said Act, the same need not be furnished. That is not the case in domestic enquiry/adjudicatory proceedings, where, when a person seeks certain documents for participating in the enquiry and when the department contends that such documents is not relied upon document in the show cause notice, it is not as a matter of right that such person can compel the department to part with such document. Therefore, it cannot be stated that the principles of natural justice is violated by not furnishing those documents, when admittedly they are not relied upon documents by the revenue.

12.It seems that the appellants seek to collect some documents in possession of the first respondent to support their case, even though those documents are not relied upon documents in the show cause notice. If at all the appellants want to get those documents from the first respondent, they could have very well filed one more RTI application and pursue the same or they could have pursued by way of filing an appeal before the first appellate authority under the Right to Information Act, if their original application filed for furnishing certain documents are not furnished in full. This aspect has been considered by the Tribunal which rightly rejected such request with which we find no infirmity.

13.It is stated that the appellants submitted that an RTI application for furnishing documents and that the same is pending. If that be the case, it is for the appellants to work out their remedy under the said application in a manner known to law, as this Court at this stage, is not expressing any view on that application, at it would go beyond the scope and jurisdiction of the present appeals.

14.Under the above stated facts and circumstances, we find no question of law much less substantial one as raised in these appeals arises for consideration to entertain these appeals. Accordingly, these appeals are dismissed. No costs. Connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar

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Tribunal, Chennai South Zonal Bench
Shastri Bhavan Annexe, First Floor,
26 Haddows Road,
Chennai 600 006.

COPY TO:
The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

2CC TO M/S.Y.PRAKASH, ADVOCATE, SR.NO.69966, 69965
21CC TO M/S.B.VIJAY KARTHIKEYAN, ADVOCATE, SR.NO.70111

COMMON JUDGMENT MADE IN
C.M.A(MD)Nos.649 and 650 of 2018
and
C.M.P(MD)Nos.10822 of 2018 and 4895 of 2019

20.06.2019

BUC(03/07/2019)7P/8C