IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.O. NO.1259 of 1998

M/s. Paharpur Cooling Towers Ltd. & Anr.

-vs-

Assistant Commissioner of Central Excise Calcutta

For the petitioner	:	Mr. Rahul Tangri, Adv. Ms. Udita Saraf, Adv.
For the respondent	:	Mr. Bhaskar Prasad Mukherjee, Adv. Mr. Parashar Baidya, Adv.
Heard on	:	28.01.2021
Judgment on	:	08.02.2021

Ravi Krishan Kapur, J.:

1. The petitioner has assailed a proceeding initiated under Section 14AA of the Central Excise Act ("the Act"). In particular, the petitioner challenges the notices dated 27 November, 1997 issued under Section 14A of the Act and dated 28 November, 1997 issued under Section 14AA of the Act and the consequential actions taken pursuant thereto.

2. The primary grievance of the petitioner is that the impugned proceedings have been initiated without giving the petitioner an opportunity of hearing. It is submitted on behalf of the petitioner that in initiating the impugned actions the respondent authorities have not adhered to the principles of natural justice and no hearing has been afforded to the petitioner. It is further submitted on behalf of the petitioner that no subjective opinion regarding invocation either under Section 14A or under Section 14 AA of the Act has been recorded in the impugned notices. As such, there are no reasons in the impugned orders. It is also submitted on behalf of the petitioner that the retrospective operation of the sections in question is not permissible in law and in any event the respondent could not have sought to open the records of the petitioner company since 1986.
3. On behalf of the respondent authorities, it is submitted that the object of section is to defend the interests of the Revenue. It is further submitted on behalf of the respondent authorities that there is nothing in Section 14AA which prevents the reopening of the records of a previous year. It is also submitted on behalf of the respondent that the Central Excise Authorities have the full power to scrutinize and assess the records of the assessee and to form an opinion of

under valuation and MODVAT utilization. It is also submitted on behalf of the respondents that Sections 14A and 14AA do not mandate providing information to the assessee before conducting a special audit. Moreover, the grounds for conducting an audit are in the file of the Department and the Department is not required to disclose the same to the assessee. In any event, according to the respondent authorities, there is no right of hearing afforded to the assessee before the audit is completed.

4. I have considered the submissions made on behalf of the parties. At the outset, Section 14AA of the Central Excise Act provides as follows:

> **14AA. Special audit in cases where credit of duty availed or utilised is not within the normal limits, etc.** - (1) ***If the Commissioner of Central Excise has reason to believe that the credit of duty availed of or utilised under the rules made under this Act by a manufacturer of any excisable goods-***
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> ***(a) is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate;***
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> ***(b) has been availed of or utilised by reason of fraud, collusion or any wilful mis-statement or suppression of facts, he may direct such manufacturer to get the accounts of his factory, office, depot, distributor or any other place, as may be specified by him, audited by a cost accountant nominated by him.***
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> ***(2) The [cost accountant or chartered accountant] so nominated shall, within the period specified by the Commissioner of Central Excise, submit a report of such audit duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified.***

> ***(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the said manufacturer aforesaid have been audited under any other law for the time being in force or otherwise.***
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> ***(4) [***]***
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> ***(5) The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under this Act or rules made thereunder.*** *(emphasis supplied)*

5. It seems to me quite plainly that the legislative intent and object of introducing Section 14AA of the Act was to scrutinize cases of abnormally high availment of MODVAT credit. This section seeks to prevent misuse of MODVAT credit by providing for cost auditing of accounts. Under this section, the Commissioner of Central Excise is the cornerstone on which the whole scheme of cost audit is balanced. If the Commissioner is satisfied that credit has been availed on excisable goods by a manufacturer which is beyond the normal limits or has been availed on account of fraud, collusion or any willful misstatement or suppression of facts he may direct the manufacturer get his accounts audited by a cost accountant. The cost accountant is then required to submit a Report to the Commissioner within the time specified by the Commissioner. This audit is in addition to all other audits which may have been prescribed by any other law in force. The expenses of the audit as determined by the Commissioner are to be

borne by the manufacturers which are subject to recovery proceedings as prescribed under the Act. The scheme of the section incorporates the observance of the principles of natural justice before any such material gathered in the audit is used against the assessee in any proceeding.

6. In *Mohinder Singh Gill & Anr. vs. the Chief Election Commissioner, New Delhi & Ors.[1978 AIR 851]*, explaining as to what is meant by civil consequences Krishna Iyer, J. had said *"Civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence*". In interpreting Section 142 (2A) of the Income Tax Act, 1961, the Supreme Court had held that a special audit is more or less in the nature of an investigation and in some cases may even turn out to be stigmatic. In any event, even if the obligation to pay the auditor's fee is taken over by the Central Government, still civil consequences would ensue on the passing an order for special audit. Ordinarily, a post decisional hearing is no substitute for a pre-decisional hearing.

7. In fact, in a number of decisions whilst interpreting Section 14AA of the Act, the Courts have categorically and repeatedly held that it is important to give an assessee a right of hearing before any order under Section 14AA is passed *[SKP Securities Ltd. vs. Deputy Director 29 (RA-IDT) 337, Berger Paints India Ltd. vs. CCE Kol-II (2017) 345 ELT 88 (Cal)]*.

8. Accordingly, I am of the view that the principles of natural justice have not been followed by the respondent authorities in initiating the impugned actions. Under such circumstances, the impugned notices and all steps and proceedings taken thereunder are set aside and quashed. The writ petition is allowed. However, this order will not prevent the respondent authorities from proceeding afresh in accordance with law under the relevant provisions.

(Ravi Krishan Kapur, J.)