IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.37719 of 2005
and
W.P.M.P.Nos.40378 & 40379 of 2005

M/s.Rasi Electrodes Ltd.,
No.21, Raja Annamalai Road,
A-10, Rams, Second floor,
Chennai – 600 084,
represented by its Managing Director,
Mr.B.Popatlal Kothari. ..Petitioner

Vs.

1.The Union of India,
Rep.by its Secretary,
Department of Revenue,
Ministry of Commerce,
North Block, Raisina Hill,
New Delhi.

2.The Commissioner of Central Excise,
No.473, MHU Complex,
Mount Road, Nandanam,
Chennai – 600 035.

3.Superintendent of Central Excise,
Office of the Superintendent of Central Excise,
Government of India,
Ministry of Finance,
Ponneri Range, Ponneri.

4.The Indian Bank,
Rep.by its Manager, Chetpet Branch,
Chetpet, Chennai – 31.
(R4 impleaded as per order dated 25.09.2019
in W.M.P.No.23069/2019 in W.P.No.37719/2005) ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent ending with the demand in OC.No.451/2004 dated 12.8.2004 and quash the same.

For Petitioner : Mr.V.S.Venkatesh

For Respondents : Mr.V.Sundareswaran
Senior Panel Counsel
[For R1 to R3]
Mr.Jayesh B.Dolia
For M/s.Aiyar & Dolia

ORDER

The Demand issued by the 3rd respondent in O.C.No.451 of 2004 dated 12.8.2004 is under challenge in the present writ petition.

2. The petitioner is M/s.Rasi Electrodes Limited and the impugned demand dated 12.08.2004 was issued, directing the petitioner company to pay a sum of Rs.1,85,000/- in respect of excise duty.

3. The learned counsel appearing on behalf of the petitioner made a submission that the amount claimed in the impugned demand notice had already been paid by the petitioner company and TR6 Challans were also produced by the writ petitioner company before the competent authorities. The impugned order is non-speaking and details regarding the non-payment or the circumstances or any other fraudulent accounts on the part of the petitioner company has not been stated in clear terms and therefore, the petitioner has chosen to challenge the impugned order of demand.

4. The learned counsel appearing on behalf of the respondents objected the contention by stating that based on the fact that the challans are found to be fabricated, the Department has issued the impugned order. This apart, an opportunity was given to the petitioner to defend their case and the petitioner had submitted their reply. Thus, the writ petition is to be dismissed.

5. This Court is of the considered opinion that impugned demand notice reveals that the amount claimed pertains to the year 1997. However, the notice was issued in July 2004, after a lapse of about 7 years. Further,

the order impugned is non-speaking and the details regarding the enquiry as well as the findings are not made available in the impugned order. Thus, the reason for arriving such a conclusion has not been elaborated in the impugned order. Such non-speaking orders, which was passed after considering the reply submitted by the petitioner cannot be appreciated by this Court. In the event of issuing any notice under the provisions of the Act and the person, who received the notice, submitted his explanations/defense statement, then the authorities competent are bound to consider the objections or otherwise and pass a speaking order, enabling the aggrieved persons to understand the reason for passing such an order.

6. This being the Principles of Natural Justice to be complied with by the competent authority, more specifically, the Statutory authorities, this Court is of an opinion that the impugned order, which is non-speaking, cannot be sustained in the eye of law.

7. This apart, the demand is made after a lapse of about 7 years. Even under the Statute, actions are to be initiated within a period of 5 years. However, the said factum is disputed by the learned counsel for the

respondent by stating that the period of limitation is not applicable. Even in such circumstances, any action by an authority, must be within a reasonable period of time and certainly not after a lapse of many years and more specifically, by passing a non-speaking order.

8. Thus, actions must be within a reasonable period, so as to understand the issues in clear terms and if at all, there is an administrative delay or otherwise or delay in identifying the mistake or fraudulent activities, then appropriate reasons are to be recorded in the order. In the absence of any such reasonings, Courts are bound to draw an inference that such non-speaking order is untenable.

9. In the present case, the petitioner even in his written statement has stated that they have made the payment during the relevant point of time and the respondent in the absence of any document, passed such an order. Even presuming that the challans are fabricated, an enquiry must be conducted and the findings of the enquiry must be recorded, then only Court can form an opinion that such an order of demand is passed, based on the fabricated Bank challans.

10. In the present case, no such factors are established nor made available in the impugned order. Thus, this Court is inclined to consider the writ petition. Accordingly, the order impugned passed by the third respondent in Demand in O.C.No.451 of 2004 dated 12.8.2004 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

08.04.2021

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Index : Yes/No
Speaking /Non-speaking order

To

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S.M.SUBRAMANIAM, J.

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