IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

| Orders Reserved On 21.01.2021 | Orders Pronounced On 01.02.2021 |
|---|---|

W.A.No.1136 of 2020
and
C.M.P.No.13894 of 2020

M/s.Ambadi Enterprises Limited
[Formerly Ambadi Trading Company Limited]
Rep. by its Director, Mr.MM.Venkatachalam,
No.43, Moor Street, Parry House, 5th Floor,
Chennai - 600 001. ..Appellant

-vs-

1.The Department of Revenue,
Ministry of Finance,
Rep. by its Joint Secretary,
14, Hudco Vishala Building "B" Wing,
6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.

2.The Commissioner of Central Excise,
No.1, Foulks Compound, AnaiMedu,
Salem - 636 001. ..Respondents

Appeal under Clause 15 of the Letters Patent to set aside the order dated 05.08.2020 made in W.P.No.15517 of 2012.

W.P.No.15517/2012:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records comprised in order No. 511/12-CX dated 30.04.2012 on the file of the first Respondent and to quash the same.

For Appellant : M/s.P.Jayalakshmi
For Respondents: M/s.Hema Muralikrishnan
Senior Standing Counsel

JUDGMENT

This appeal by the writ petitioner is directed against the order dated 05.08.2020 in W.P.No.15517 of 2012. The said writ petition was filed by the appellant challenging the order passed by the first respondent dated 20.04.2012 in a revision application filed by the appellant under Section 35 of the Central Excise Act, 1944 ['the Act' for brevity] questioning the correctness of the order in appeal passed by the Commissioner of Central Excise (Appeals), Salem dated 28.05.2010 who confirmed the order-in-original dated 22.09.2008 passed by the Additional Commissioner of Central Excise, Salem.

2.We have heard M/s.P.Jayalakshmi, learned counsel appearing for the appellant and M/s.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the revenue.

3.The respondent Department issued show cause notice to the appellant calling upon them to show cause as to why the rebate amount of Rs.15,84,083/- erroneously sanctioned to them should not be recovered under Section 11A(1) of the Act and as to why penalty should not be imposed on them and why interest should not be demanded. The assessee submitted their reply, sought for copies of the relied upon documents which were provided to the assessee and subsequently another request was made for furnishing copies of the document which not being relevant to the issue which was subject matter of the show cause notice, the request was not acceded to and ultimately, order dated 20.09.2006 was passed confirming the proposal in the show cause notice. The said order was challenged by the appellant by filing an appeal before the Commissioner of Central Excise (Appeals), Salem. The appeal was allowed by order dated 26.03.2007 and the matter was remanded to the original authority with direction to supply the relied upon documents and if the documents are voluminous, the appellant should be granted liberty to peruse the same and after which, the appeal should be granted time to submit their reply and then an order has to be passed.

4.Pursuant to the order of remand, the original authority, namely, Additional Commissioner of Central Excise, Salem passed the order-in-original dated 22.09.2008 confirming the demand raised in the show cause notice. The appellant had earlier filed a revision application before the Central Government under Section 35EE of the Act challenging the order dated 26.03.2007 passed by the First Appellate Authority remanding the matter to the original authority for denovo consideration. The said revision was pending, however, in the meantime, the original authority completed the denovo adjudication and confirmed the demand by order dated 22.09.2008. The revision application filed before the Central Government appears to have been heard subsequently and by order dated 08.01.2010, the same was dismissed confirming the order dated 26.03.2007. The appellant filed an appeal before the Commissioner of Central Excise (Appeals), Salem challenging the order-in-original dated 22.09.2008. The said appeal was dismissed by order dated 28.05.2010. Challenging the same, the appellant preferred revision before the Central Government under Section 35EE of the Act which was dismissed by order dated 30.04.2012. This order was put to challenge in the writ petition which was dismissed by the impugned order.

5.The argument of the learned counsel for the appellant is that the original authority while confirming the demand by order dated 22.09.2008 failed to comply with the directions issued by the First Appellate Authority in the order dated 26.03.2007 in as much as the relied upon documents which were directed to be given were not furnished and therefore, the Central Government ought to have interfered with the orders of the lower authorities and set aside the demand. It is further submitted that since the original authority is an Officer lower in rank to the appellate authority, judicial discipline demands that the lower authority implicitly obeys the direction issued by the appellate authority. It is further submitted that in the impugned order apart from confirming the demand for central excise duty penalty has also been confirmed without considering the contentions advanced by the appellant that there was no proposal in the show cause notice to impose penalty under Section 11AC of the Act. Further, the learned counsel submitted that in an identical circumstances in the case of Adani Enterprises vs. Union of India [2015 (324) ELT(Madras)], identical orders were set aside by the learned Single Bench of this Court on the ground that it was passed in violation of the principles of natural justice and the authority ought to have taken note of the said decision and interfere with the order passed by the original authority.

6.The revenue seeks to sustain the impugned order by referring to the findings rendered by hierarchy of authorities as well as those recorded by the learned Writ Court.

7.The present litigation is a second round of litigation on the same issue. The claim for rebate which was made and received by the appellant was for the period from December 1998 to March 2000. When the Officers attached to the Headquarters, Preventive Unit, Coimbatore visited the M/s.Erode Rana Textile Processors Limited [M/s.ERTP], Bhavani on 06.09.2010 to verify the correctness as to whether they had accounted for the entire production properly in the statutory records, several incriminating documents were recovered, statements were recorded and the appellant was one of the Companies which has paid the processing charges to M/s.ERTP among others and ultimately a show cause notice came to be issued to the appellant calling upon them to explain as to why the rebate erroneously sanctioned should not be cancelled and amount be recovered. The show cause notice was adjudicated and the demand made therein was confirmed and equal amount was imposed as penalty under Section 11AC of the Act r/w. Rule 173Q and Rule 210 of the Erstwhile Central Excise Rules, 1944 r/w. Section 38A of the Act and appropriate interest under Section 11AB was also demanded. The amount equivalent to the amount demanded being the excess rebate sanctioned was imposed as penalty on M/s.ERTP. The said Company M/s.ERTP has not challenged the proceedings and action initiated against them has attained finality. The appellant pursued the matter by way of an appeal mainly contending that there has been violation of principles of natural justice and relied upon documents were not furnished. The First Appellate Authority agreed with the said contention and remanded the matter.

8.On remand, the adjudicating authority took up the matter for consideration. From a reading of the order dated 22.09.2008, it is evidently clear that the appellant was dragging on the matter and every attempt was being made by the appellant to delay the denovo adjudication. Probably this was due to the fact that the appellant had filed a revision application before the Central Government challenging the order of the First Appellate Authority dated 26.03.2007 remanding the matter for fresh adjudication. Ultimately the original authority on denovo adjudication confirmed the proposal in the show cause notice. In the order dated 22.09.2008, the adjudicating authority has rendered a finding that the documents which were placed by the revenue are the documents which show that M/s.ERTP indulged in clandestine production and removal of processed fabric and they contain all the details in respect of clandestine transactions made to all customers. Further, with regard to the third request made by the appellant for supply of documents, the adjudicating authority has considered the same and has recorded his opinion as to how it will not be of relevance to the appellant. He has observed that there cannot be two opinions that providing the copies of the documents to one of the much end exporters involved would not serve any purpose as the appellant before us would not be in a position to offer any other explanation to form opinion on this matter. Thus, according to the adjudicating authority, the third request of the appellant for supply of document was irrelevant and of no assistance to the appellant.

9.The correctness of the decision was questioned before the First Appellate Authority. On a reading of the order dated 28.05.2010, it is evidently clear that it is a reasoned order after considering all aspects including the contention advanced by the appellant that there has been violation of principles of natural justice in not supplying the documents sought for. The First Appellate Authority noted that the processor [M/s.ERTP] had not preferred any appeal and there is no dispute over the actual quantity of processed fabric produced by M/s.ERTP when the whole scheme of evasion through illicit design has been accepted as uncontested by M/s.ERTP, there would be no necessity to provide copies of the documents as requested by the appellant. Further, the First Appellate Authority noted that the Director of M/s.ERTP has himself admitted the non-accounting/non-payment of duty of processed fabric cleared from their factory. Aggrieved by the dismissal of the appeal, the appellant filed a revision application before the Central Government. The revisional authority went through the records and has rendered a finding that on investigation it was found that the processor [M/s.ERTP] have suppressed the actual production in the statutory records and shown only lesser quantity and they had subsequently furnished actual production details to the Department, consequently, the rebate for which the appellant is entitled to would be lesser by Rs.15,84,083/-. The revisional authority also considered the contention of the appellant for violation of principles of natural justice as relied upon documents were not produced. This contention was rejected with the following observations:

> "8.............The applicant's sole contention is that they had not provided relied upon documents but on perusal of records it is observed that the lower adjudicating authority concluded that when there is no dispute on the actual quantity of processed fabrics produced by the processor and when the whole scheme of evasion through illicit and nefarious design had been accepted as uncontested by the processor M/s.ERTP there is no necessity to provide the copies of document when the applicant had already given their admission in respect of their transaction to the unresiled statement given during the investigation. Commissioner (Appeals) has already considered the contention of the applicants and passed a reasoned order. Commissioner (Appeals) has recorded in his findings that applicant's representative had already inspected the documents and further they have failed to substantiate the relevance of said document to their defence. In view of this position, Government observes that relevant documents are inspected by the representative of applicant and therefore no principles of natural justice are violate."

10.The appellant filed the writ petition challenging the order of the revisional authority and raised the same contentions which they advanced before the adjudicating authority, the First Appellate Authority and in the revision application before the Central Government. The learned Single Bench has in extenso considered the contentions, more particularly, the contention that relied on documents were not provided and has rejected the same as not tenable. It would be relevant to note the finding recorded on this aspect which is as follows:

> "11.Insofar as the show cause notice issued to the petitioner herein is concerned, it is seen that the notice extended an opportunity to the petitioner to peruse the records relied upon by the department and take copies, if required, within 15 days of the receipt of the notice dated 12.12.2003. However, the petitioner had replied that that it was inconvenient for them to peruse the documents relied upon in the case and sought for copies of all the relied documents. The respondents had thereafter permitted the representative of the petitioner to inspect the documents on 01.08.2006 and 02.08.2006 as well as allowed them to take copies of certain documents. Pursuant to this, the petitioner had chosen to seek for further documents during the personal hearing and when the relevancy of such documents were questioned by the original authority, there was no satisfactory explanation from the petitioner's side. All the above said facts are reflected in the various orders passed by the authorities both before and after the remand.
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> 12...........
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> 13.The answer to this issue would be two fold. Firstly, as to whether a reasonable opportunity was extended to the petitioner during the course of the proceedings? And secondly, the relevancy of the documents sought for by the petitioner for establishing his case and their bona-fides in making such a request?
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> 14.As stated earlier, when the show cause notice dated 12.12.2003 was issued to the petitioner, there was a specific statement therein that the petitioner was at liberty to peruse the records relied upon by the department and take copies, if required, within 15 days of its receipt. This statement in the show cause notice is not disputed by the petitioner. However, without availing the opportunity, the petitioner had insisted the department to send the copies of all

the documents through a reply letter dated 03.01.2004, which was received by the department on 06.01.2004. Even this reply was not made within the 15 days period stipulated in the show cause notice. Subsequently, during the course of personal hearing, another opportunity was extended to the petitioner to peruse the document and take copies thereof. The petitioner's representative has perused the documents relied upon by the department on 01.08.2006 and 02.08.2006 and had chosen to take copies of some of the documents. The petitioner thereafter had sent a letter dated 11.08.2006, requesting for further documents. This aspect is also not disputed by the petitioner and has been admitted in the affidavit filed by the petitioner in the present Writ Petition.

15.Thus, it is seen that a reasonable opportunity was indeed extended to the petitioner to peruse and take copies of the documents relied upon by the department, which the petitioner did not avail of. Therefore, the substance of the petitioner's submission that the documents relied upon by the department was not furnished to them, is unacceptable."

11.Considering the factual finding which has been rendered by the hierarchy of authorities as well as the learned Writ Court, we find that absolutely no substance in the argument advanced before use on behalf of the appellant. The facts and circumstances clearly show that there has been no violation of principles of natural justice and the appellant has been harping upon certain documents which are of no impact on their case and in fact the founder, namely, M/s.ERTP themselves have accepted the suppression and have not challenged the action initiated by the Department against them. Thus, we find that there is absolutely no ground to interfere with the order passed by the learned Single Bench.

12.It was argued by the learned counsel for the appellant that in the show cause notice there was no proposal for levy of penalty under Section 11AC. This is an incorrect submission because relevant rules find place in the show cause notice as well as the order-in-original, probably non-mentioning of Section 11AC can in no manner vitiate the proceedings. In fact, the appellant appears to have not raised this contention in the year 2006 when proceedings were initiated against them and the present attempt is a belated attempt which cannot be a ground to interfere with the impugned order.

13.For the above reasons, we find no merits in this appeal and accordingly, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cse
To

1.The Department of Revenue,
Ministry of Finance,
Rep. by its Joint Secretary,
14, Hudco Vishala Building "B" Wing,
6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.

2.The Commissioner of Central Excise,
No.1, Foulks Compound, AnaiMedu,
Salem - 636 001.

+1 CC to M/s. Hema Muralikrishnan, Advocate sr 5163.
+1 CC to Mr.S. Muthu Venkatraman, Advocate sr 5254.

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and C.M.P.No.13894 of 2020

PPA(CO)
SP(02/03/2021)