Item No.1.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 17.03.2022.

DELIVERED ON:17.03.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT 340 OF 2022
WITH
I.A. NO.CAN 1 OF 2022

M/S. J. S. PIGMENTS PRIVATE LIMITED & ANR.
VERSUS
COMMISSIONER OF CGST & CENTRAL TAX, HOWRAH COMMISSIONERATE & ORS.

Appearance:-
Mr. P. K. Das,
Mr. Roshan Sengupta ……for the appellants

Mr. Bhaskar Prasad Banerjee,
Mr. Tapan Bhanja .. for respondents.

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. We have heard Mr. P. K, Das, learned counsel appearing for the appellants and Mr. Bhaskar Prasad Banerjee, learned standing counsel appearing for the revenue.

2. This appeal is directed against the order dated 7th March, 2022 in W.P.A. No.2692 of 2022. The said writ petition was filed by the appellants praying for issuance of writ of mandamus to quash the order dated 28th January, 2022 and the show cause notice dated 4th September, 2017 issued by the second respondent; for a writ of declaration to declare the order dated 28th January, 2022 and the show cause notice dated 4th September, 2017 as invalid and for a direction upon the respondent nos.2 and 3 to return non-relied upon documents (Non RUDs) and relied upon documents (RUDs) as mentioned in the seizure list dated 12th September, 2017 and to prohibit the respondents from adjudicating the show cause notice. The learned Writ Court by the impugned order dismissed the writ petition holding that the order dated 28th January, 2022 does not call for any interference. Challenging the said order, the appellants are before us.

3. The learned counsel appearing for the appellants has drawn our attention to Rule 24A of the Central Excise Rules, 2002 (for brevity "Rules"), which deals with return of records. It is submitted that during the search and seizure operations, several records from the appellants' business premises were seized and in terms of Rule 24A, all documents, which are not relied upon documents for issuance of show cause notice under the provisions of the Central Excise Act, 1944 (for brevity "the Act") and the Rules framed thereunder shall be returned within 30 days from the date of issuance of the show cause notice or within 30 days from the date of expiry of the period of issuance of the show cause notice. It is further submitted that the proviso in Rule 24A states that if the Central Excise Officer desires to retain the documents, then an order to the said effect has to be passed by the Principal Commissioner of the Central Excise or the Commissioner of the Central Excise, as the case may be. It is submitted that the second respondent had violated Rule 24A and though the show cause notice was issued as early as on 4th September, 2017, the documents, which are not relied upon for issuance of the show cause notice have not been returned to the appellants, which had compelled the appellants to approach this

Court on two earlier occasions and the present impugned order was passed in the third writ petition filed by the appellants. Further, the learned counsel submitted that no case has been made out for invoking the extended period of limitation under Section 11A of the Act. It is further pointed out that unless and until the documents are returned to the appellants, they will not be in a position to submit an effective reply to the show cause notice thereby denying them reasonable opportunity.

4. The learned counsel further submitted that though there was a prayer in the writ petition to quash the show cause notice, in this appeal the appellants do not wish to press the said relief sought for. The said submission is placed on record.

5. The learned standing counsel for the respondents submitted that the order dated 28th January, 2022 passed by the second respondent is a speaking order passed after due application of mind and the authority should be permitted to adjudicate the show cause notice.

6. After having heard the learned counsels for the parties and perused the materials placed on record, we are of the view that the challenge to the show cause notice was rightly rejected by the learned Writ Court and therefore, to that extent the order passed in the writ petition stands affirmed.

7. The second contention is with regard to the applicability of Rule 24A of the Rules to the case on hand. In our considered view, it will be too late for the appellants to now harp upon the 30 days' time limit for returning the documents as it is the appellants, who approached this Court not once but thrice for certain reliefs and in W.P. No.9985 of 2021 direction was issued to the authority to pass a speaking order on the request made by the appellants. Thus, the order dated 28th January, 2022 having been passed in accordance with the directions issued by this Court in the writ petition, the question of now invoking the 30 days' time limit under Rule 24A does not arise.

8. With regard to whether the department was entitled to invoke the extended period of limitation under Section 11A of the Act, it is not purely a question of law but a mixed question

of law and fact and it is for the appellants to agitate the same while submitting reply to the show cause notice. We take note of the submission of the learned counsel for the appellants that if the appellants are not afforded reasonable opportunity to examine the documents, they will not be in a position to submit an effective reply to the show cause notice. However, we wish to add a caveat to this submission that while it may be true that the appellants should have an effective opportunity to submit a reply to the show cause notice, that would not automatically entitle the appellants for return of the documents to them as the adjudication is yet to commence.

9. Therefore, we are of the view that if the appellants are permitted to examine the documents in the office of the respondents and permitted to take photostat copies of the relevant pages of the documents at the cost of the appellants and thereafter if the appellants are given time to submit reply to the show cause notice, it would fulfill the principles of natural justice.

10. In the result, this appeal is partly allowed while affirming the order passed by the learned Single Bench in rejecting the challenge to the show cause notice.

11. With regard to the relief sought for return of the documents, the same cannot be granted at this stage as adjudication is yet to commence. However, we direct that the second respondent shall permit the authorised representative of the appellants to peruse all the documents, which have been referred to in the show cause notice and in the order dated 28th January, 2022 and wherever required, permit the appellants to take photostat copies of the same at their costs.

12. The second respondent shall grant 10 clear days' time to peruse the documents in the office of the second respondent during working hours. The appellants, upon completion of perusal within the time stipulated, are granted 15 days' time thereafter to submit reply to the show cause notice. After receipt of the reply to the show cause notice, the second respondent shall commence the adjudication process and complete the same not later than 45 days from the date on which the reply

to the show cause notice is submitted after affording an opportunity of personal hearing to the authorised representative of the appellants.

13. The appeal and the connected application are disposed of. No costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree.

(HIRANMAY BHATTACHARYYA, J)

NAREN/PALLAB(AR.C)