OD-32

APOT/45/2022
IA No. GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

JIWANRAM SHEODUTTRAI INDUSTRIES PVT. LTD.

-Versus-

UNION OF INDIA AND ANR.

Appearance:
Mr. Jishnu Saha, Sr. Adv.
Mr. Rohit Das, Adv.
Ms. Kishwar Rahaman, Adv.
Mr. Pramit Biswas, Adv.
...for the appellant.

Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 6th April, 2022.

The Court : We have heard Mr. Jishnu Saha, learned senior counsel assisted by Mr. Rohit Das, Ms. Kishwar Rahaman and Mr. Pramit Biswas, learned Advocates appearing for the appellant and Mr. B. P. Banerjee, learned standing Counsel assisted by Mr. Tapan Bhanja, learned Advocate appearing for the respondent.

The appellant had filed the writ petition being WPO/1562/2021 challenging the order-in-original dated 8th October, 2021 passed by the respondent authority primarily on the ground that it was in violation of the principles of natural justice. The learned single Judge considered the matter and was satisfied that the adjudication has to be redone in accordance with law. Accordingly, the writ petition was allowed and the order passed by the adjudicating authority was set aside and the matter was remanded for fresh consideration. The appellant is not aggrieved by such direction which is wholly in its favour. The appellant is aggrieved by the direction issued by the learned Single Judge in directing deposit 7.5% of the disputed amount of tax within a time frame. The correctness of such direction is in question before us in this appeal.

Before we examine the said aspect we need to point out that the show cause notice which was issued on 20th July, 2021 for recovery of duty draw back availed by the assessee during the period from 3rd June, 2008 to 31st March, 2013 and 9 months from the date of export. It is not clear as to why the department had not taken any action earlier and have issued the show cause notice in respect of certain exports effected by the appellant between the period from 2008 to 2013 in the year 2021. If that be the case, the appellant/assessee was entitled to be given sufficient, reasonable and effective opportunity to put forth their contentions. In response to the show cause notice the assessee had submitted reply dated 20th August, 2021 in which it was stated that on account of fire accident in the factory premises, most of the records upto the year 2016 were destroyed. However, the appellant/assessee requested for six months time to produce the desired details and documents. We find from the order-in-original dated 8th October, 2021 that the adjudicating authority has not either accepted or rejected the request for adjourning the proceedings. However, he proceeded to issue notice for personal hearing. The specific case of the appellant/assessee is that no such notice of personal hearing was received by them. Before the learned single Bench, the respondent/department contended that notice of personal hearing was sent to the e-mail address provided by the petitioner. This probably was provided much earlier to the year 2008. Therefore, the appellant contended that those e-mail addresses are not functional. Thus, the adjudicating authority appears to have proceeded in haste and concluded the proceedings ex parte. These aspects were rightly taken note of by the learned single Bench and the order has been set aside and the matter has been sent back to the adjudicating authority for fresh consideration. Hence, there is no error in such a direction.

Now we move on to consider as to whether the learned writ Court could have imposed a condition on the appellant assessee by directing them to deposit 7.5% of the duty claimed. Admittedly, the order-in-original dated 8th October, 2021 was quashed by the learned writ Court. If such is the factual position, the demand of duty as demanded in the said order does not any longer survive as fresh adjudicating has been ordered by the learned writ Court. Therefore, the learned writ Court committed an error in directing deposit of 7.5%. Therefore, such direction needs to be interfered with.

For the above reasons, the writ appeal (APOT/45/2022) is allowed and the direction issued by the learned single Judge directing deposit of 7.5% is set aside.

Learned senior counsel appearing for the appellant submitted that the appellant has been able to trace the records and is willing to submit a reply to the show cause notice within 15 days from the date of receipt of a server copy of this order. We direct the appellant to submit reply to the notice within 15 days from the date of receipt of a server copy of this order and thereafter the respondent authority shall commence adjudication process by affording an opportunity of personal hearing to the authorised representative of the appellant/assessee by putting the appellant/assessee on notice of the hearing date that may be fixed. The adjudicating authority shall independently consider the matter uninfluenced by any of the findings recorded in the earlier order which has been quashed by the Court and thereafter the authority shall pass a reasoned order on merits and in accordance with law.

Consequently, the connected application for stay also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.