



W.A(MD)No.1151 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 10.11.2022

PRONOUNCED ON : 17.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.A(MD)No.1151 of 2014

Sanmar Foundries Limited,
Represented by
J.Ramdas, Executive Vice President – Finance

... Appellant / Petitioner

Vs.

The Commissioner of Central Excise and Customs,
No.1, Williams Road, Cantonment,
Tiruchirappalli – 620 001.

... Respondent / Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against
the order dated 21.08.2014 in W.P(MD)No.4296 of 2014.

For Appellant : Mrs.L.Maithili

**For Respondent : Mr.R.Nanda Kumar,
Senior Panel Counsel for
Central Excise and Customs
Assisted by
Mrs.S.Ragaventhre
Junior Standing Counsel**



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JUDGMENT

M.S.RAMESH, J.

The above writ appeal is filed challenging the order, dated 21.08.2014 passed in W.P(MD)No.4296 of 2014.

2. The appellant Company manufactures steal castings. The principal raw materials for the final product is metal scrap. The factory premises of the appellant was inspected by the Anti-Evasion Wing of the respondent and in pursuance of such an investigation, the appellant had paid a sum of Rs.7.53 Crores to the respondent on various dates. However, the appellant claimed that this payment was made under threat or duress and that, they were not obligated to pay the amount and hence, had filed a writ petition in W.P(MD)No.2026 of 2013, seeking for refund of the amount of Rs.7.53 Crores. By an order, dated 08.11.2013, a learned Single Judge had disposed of the writ petition by issuing certain directions, in the following manner:

“7. In the above said circumstances, the only course which is possible for this Court is to issue a direction to the respondents to complete the



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investigation and to issue show cause notice within a time frame and to issue a direction to the Quasi Judicial Authority to pass final order, after affording opportunity to the petitioner, within a time frame.

8. When this was stated, the learned counsel for the respondents would submit that on or before 30.11.2013, the investigation would be completed and show cause notice would be issued to the petitioner by the Quasi Judicial Authority. The learned counsel for the petitioner in turn would submit that in the event such show cause notice is issued before 30.11.2013, the petitioner will submit his objection, along with the documents, within three days, thereafter. The learned counsel for the respondents would submit that if the petitioner co-operates and submits his explanation and objection, along with the documents, after affording opportunity to the petitioner, the Quasi Judicial Authority will pass order within two months thereafter. The said statement is recorded.

9. In view of the above, this writ petition is disposed of with the following directions;

(a) the investigating authority shall complete the investigation and thereafter, show cause notice shall be issued by the Quasi Judicial Authority viz., the first respondent herein, on or before 30.11.2013.



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(b) The petitioner shall, thereafter, submit objections, if any, along with the documents withing five days.

(c)It is further directed that after the submission of the objections and the documents, by the petitioner, the Quasi Judicial Authority shall afford sufficient opportunity to the petitioner and pass final adjudication order within a period of one month thereafter.

d) It is further directed that subject to the outcome of the final order, the above said sum of Rs. 7.53 crores paid by the petitioner shall be either refunded or adjusted towards the duty, however, subject to the appeal remedy.”

3. As against the order of the learned Single Judge, an intra Court appeal was filed in W.A(MD)No.339 of 2014, in which, a coordinate Bench had held that the respondents will have no authority to receive the payment when no ascertainment of the duties has been made by the Central Excise Officer and therefore, allowed the writ appeal and directed for refund of the sum of Rs.7.53 Crores. The relevant portion of the order reads as follows:

“20. In the case on hand, there was nothing except an inspection and verification. It was never the case of the respondents that they



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found out duty evasion in the course of investigation and that when they were ready to serve a notice under sub-section (5), the appellant made payment in terms of sub-section (6). Had this been their contention, the respondents ought to have show the break-up of the amount of Rs.7.53 crores into (i) duty; (2) interest ; and (iii) penalty. In the absence of any of these details, the respondents cannot contend that the payment was in terms of sub-section (2) and it prohibits the Central Excise Officer from serving any notice in respect of the amount paid. But, in the case on hand, a notice has been served after the learned Single Judge disposed of the writ petition, with liberty to the respondents. Therefore, it is clear that the amount of Rs.7.53 crores paid by the appellant, will not fall either under Section 11-A (1)(b) of under Section 11-A(6). If it will not fall under any of these two provisions, it cannot be taken to be a payment made in relation to any statutory provision. Therefore, irrespective of whether the amount was paid under coercion or voluntarily, the respondents have no business to retain the same. Hence the contention of the learned Standing Counsel for the respondents that the payment was authorised by law has to be stated only to be



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rejected.

21. The writ appeal is allowed, the order of the learned Judge is set aside and the writ petition filed by the appellant is allowed, directing the respondents to refund the amount of Rs.7.53 crores, collected from the appellant. We give a time of four weeks to the respondents to make payment of the amount to the appellant, from the date of receipt of a copy of this order. If the respondents fail to make payment within four weeks from the date of receipt of a copy of this order, the respondents will become liable to pay interest at 6% per annum on the said amount from the date of expiry of the time for payment stipulated herein.”

4. In the meantime, after the disposal of the writ petition in W.P(MD)No.2026 of 2013, the respondents had issued a show-cause notice, dated 29.11.2013, on the basis of the directions issued in W.P(MD)No.2026 of 2013, calling upon the appellant to show-cause as to why penalty should not be imposed on them under Rules 25 and 26 of the Central Excise Rules, 2002, for contravention of Rule 11 of Central Excise Rules, 2002 and Rule 9 of the Cenvat Credit Rules, 2004, inasmuch as they



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have fraudulently and deliberately issued fake Cenvat invoices to cover the supply of non-duty paid Iron scrap to M/s.Sanmar without actually supplying the said materials that were described in the said invoices and thereby, facilitated M/s.Sanmar to avail ineligible Cenvat Credit during the period from November 2008 to September 2012. Challenging the said show-cause notice dated 29.11.2013, the appellant had filed a writ petition in W.P(MD)No.4296 of 2014. By an order dated 21.08.2014, a learned Single Judge dismissed the writ petition on the ground that the petitioner has not made out a case for quashing the statutory proceedings.

5. Since the show cause-notice itself is directed pursuant to the directions issued by the learned Single Judge in W.P(MD)No.2026 of 2013, the present writ appeal has been filed challenging the writ Court order in W.P(MD)No.4296 of 2014.

6. The learned counsel for the appellant submitted that the investigation conducted by the respondent itself is premeditated, since the same has not been taken to its logical conclusion and that it is an attempt to justify the earlier arbitrary recovery of Rs.7.53 Crores from M/s.Sanmar. It is also her submission that the show-cause notice itself is a predetermination of



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the respondent's claim even when the investigations were in progress.

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7. The learned standing counsel for the respondent however would submit that the order impugned in the writ petition was only a show-cause notice to which the appellants are at liberty to give their objections and which they had already given. On this basis, the learned counsel submitted that they may be given opportunity to take further course of action based on the objections given by the appellant Company.

8. Heard Mrs.L.Maithili, learned counsel for the appellant and Mr.R.Nanda Kumar, learned Senior Panel Counsel, assisted by Mrs.S.Ragaventhre, learned Standing Counsel appearing on behalf of the respondent.

9. It is no doubt true that the scope of interference to a show-cause notice by a writ Court exercising its power under Article 226 of the Constitution of India, is very limited, barring few exceptions, like lack of jurisdiction or abuse of process of law, etc. In one such decision in the case of *Union of India and another vs. Vicco Laboratories* reported in **2007 (13) SCC 270**. The relevant portion of the decision reads as follows:



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“Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.”

10. In the instant case, there is a major flaw, which dispossess the jurisdiction of the respondent in proceeding further with the show-cause notice. As stated earlier, the impugned show-cause notice itself was on the strength of the directions issued by the learned Single Judge in W.P(MD)No.2026 of 2013, dated 08.11.2013, wherein the Investigating Authority was called upon to complete the investigation and thereafter, the Commissioner of Central Excise was granted liberty to proceed further with



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the adjudication after granting sufficient opportunity to the appellant. The consequential action on the part of the Commissioner of Central Excise, to issue the show-cause notice on 29.11.2013, could be termed to be in accordance with the directions of the learned Single Judge as stated above. However, the appellant had also challenged the order passed in W.P(MD)No.2026 of 2013 in W.A(MD)No.339 of 2014, which came to be allowed on merits. The reason assigned by the coordinate Bench while allowing the appeal is that the payment of Rs.7.53 Crores made by the appellants either on their own accord or under threat or coercion, will not qualify as a payment made in terms of Section 11(A)(1)(b) of the Central Excise Act. The Bench had further held that in order to invoke sub-section 3 of Section 11(A), the Excise Officer should form an opinion and that the respondents have issued a show-cause notice after the order of the learned Single Judge, which is not in terms of Section 11(A)(3) and therefore, the payment of Rs.7.53 Crores made by the appellant cannot be said to be in terms of 11(A)(1)(b) of the Central Excise Act. With these observations, the Bench had allowed the writ appeal and 'set aside' the order of the learned Single Judge.



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11. Thus, when the order of the learned Single Judge in W.P(MD)No.2026 of 2013 itself has been set aside, the consequential action taken by the respondent pursuant to such directions made in W.P(MD)No.2026 of 2013, has to necessarily abate. Though the original issuance of the show-cause notice may be in terms of the directions of the writ Court, any further contemplation of proceeding with the show-cause notice, would be without any authority, in view of the subsequent order passed in W.A(MD)No.339 of 2014. Thus, the consequential notice could be termed to be without any jurisdiction and would amount to an abuse of the process of law, as held by the Hon'ble Supreme Court in *Vicco Laboratories's* case(supra). Hence, the appellant would be entitled to succeed.

12. Accordingly, the order of the learned Single Judge dated 21.08.2014 passed in W.P(MD)No.4296 of 2014, is set aside. In consequence, the impugned show-cause notice No.22/2013-Central Excise, dated 29.11.2013, is quashed. The writ appeal stands allowed. No Costs.

[M.S.R.,J.] & [N.A.V.,J.]

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AND
N.ANAND VENKATESH, J.**

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**JUDGMENT MADE IN
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