11.08.2023
Item No.9
gd/ssd

MAT/931/2023
IA NO: CAN/1/2023
IVL DHUNSERI PETROCHEM INDUSTRIES PRIVATE LIMITED AND ANR.
VS
UNION OF INDIA AND ORS.

Mr. Rajarshi Datta
Mr. Rahul Dhanuka
..for the Appellants.

Mr. Ajay Krishna Chatterjee,
Ms. Sarda Sha
..for the Union of India.

Mr. Bhaskar Prosad Banerjee,
Mr. Tapan Bhanja
..for the Customs Authorities.

1. This intra court appeal is directed against the order passed by the learned Single Bench dated 10th April, 2023 in WPA 6677 of 2023.

2. The said writ petition was filed challenging the show cause notice issued by the respondent authority dated 16th March, 2022, namely, the Zonal Developmental Commissioner, Falta Special Economic Zone dated 16th March, 2022. During the pendency of the writ petition the authority proceeded with the adjudication of the show cause notice and when the matter was heard on 10.04.2023, submission was made by Mr. Chatterjee, learned senior advocate appearing for the Department that the adjudicating authority is to pass the order in original shortly and taking note of this submission the learned writ court

directed the authority to pass a final order and leaving it open to the appellants to seek appropriate remedy against such an order in accordance with law.

3. The learned advocate appearing for the appellants contended that the jurisdictional issue which was raised in the writ petition was not at all taken into consideration and the appellants had specifically contended that there is a gross delay in issuance of the show cause notice dated 16th March, 2022 as the report of the Comptroller and Auditor General (CAG) is purported to make certain comments in the audit report which was drawn in the year 2013 and, therefore, the show cause notice is hopelessly barred by limitation. It is no doubt true, such contention was raised in the writ petition and has also been canvassed before this court in the present appeal. However, in the reply to the show cause notice the said point has not been specifically canvassed by the appellants.

4. Be that as it may, the question as to jurisdiction being a question of law can be permitted to be raised by the assessee at any given point of time and there is no bar for the assessee from raising the issue at any stage of the proceedings. In any event the jurisdictional issue cannot be decided in a writ proceedings de hors adjudication into facts much of which are being disputed by both parties. Therefore,

appropriate procedure would be for the adjudicating authority to rule on its jurisdiction. However, this was not done by the adjudicating authority while passing the order in original dated 05.06.2023 since it appears that It was not specifically pleaded in the reply to the show cause notice dated 16th March, 2022. However, to be noted that such a ground has been specifically raised in the writ petition and admittedly, the adjudication was done during the pendency of the writ petition and the order in original was passed much after the order was passed in the writ petition. Therefore, in all fairness the adjudicating authority ought to have decided the jurisdictional issue.

5. Therefore, we are of the view that the matter requires to be reconsidered by the authority especially with regard to the jurisdictional point raised by the appellants as well as the other points that may be canvassed by the appellants during the adjudication proceedings.

6. For the above reasons, the appeal and the writ petition are allowed and the order in original dated 05.06.2023 is set aside and the matter is remanded back to the Zonal Developmental Commissioner, Falta Special Economic Zone i.e. the 2nd respondent for fresh consideration of the matter.

7. The appellants are directed to file additional reply to the show cause notice within a period of ten

days from the date of receipt of the server copy of this order. On receipt of the additional reply, the 2nd respondent shall fix a date for personal hearing in which the authorized representative of the appellants shall be afforded an opportunity to make their submissions and after hearing the submissions on behalf of the appellants, the 2nd respondent shall pass fresh orders on merits and in accordance with law.

8. Needless to state that the 2nd respondent should specifically decide the jurisdictional issue as first amongst the several issues which may be required to be decided during the adjudication proceedings.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)