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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13421 OF 2023

EPL Limited … Petitioner

Versus

The Union of India & Ors. …Respondents

Mr. Jas Sanghavi with Mr. Suyog Bhave i/b. PDS Legal, for the Petitioner.
Mr. Jitendra B. Mishra with Mr. Ram Ochani, for Respondents

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.
DATED: 22 JANUARY, 2024

ORAL JUDGMENT (Per G. S. Kulkarni, J.)

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties heard finally.

2. This petition under Article 226 of the Constitution of India is filed praying the following substantive reliefs:-

> “(a) that this Hon’ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioners’ case and after going into the validity and legality quash and set aside the impugned Show Cause cum Demand Notice F. No. V/Adj/SCN/15-164/Essel/K-1/Th.1/ 2011/4065 dated 20.12.2011 issued by the Additional Commissioner of Central Excise, Thane – 1 and pending for adjudication before Respondent No.3, with consequential reliefs.

> (b) That this Hon'ble Court be pleased to issue writ of Prohibition or any other appropriate writ in the nature of prohibition prohibiting the Respondents to refrain Respondent No.3 from taking further steps or proceeding pursuant to or in furtherance of the impugned Show Cause cum Demand Notice F. No.V/Adj/SCN/15-164/ Essel/ K-1/ Th.I/2011/4065 dated 20.12.2011 issued by the Additional Commissioner of Central Excise, Thane-I and pending for adjudication before Respondent No.3."

3. The relevant facts are: During the period 2008-2009 the petitioner filed twelve rebate claims under Rule 18 of the Central Excise Rules,2002 for a rebate of Rs.29,37,879/-. By two orders dated 18 April 2009 and 1 October 2009, the Assistant Commissioner of Central Excise rejected the said rebate claims. Being aggrieved by such rejection, the petitioner has filed appeals challenging the said orders passed by the Assistant Commissioner of Central Excise. By an order dated 20 August 2010 the Commissioner (Appeals) has allowed the petitioner's appeal and held that the petitioner was entitled to the rebate claims. The Commissioner of Central Excise, being aggrieved by the said order passed by the Commissioner (Appeals), approached the Customs, Excise and Service Tax Appellate Tribunal (for short '**CESTAT**'). By an order dated 29 August 2011 the CESTAT dismissed the appeal filed by the Commissioner of Central Excise as not maintainable in terms of the first proviso of Section 35B(1) of the Central Excise Act. Being aggrieved by such order, the Commissioner of Central Excise filed a revision application before the Revisionary Authority. Pending the adjudication of the revision application, on 20 December 2011 the Additional Commissioner of Central Excise, Thane-I, issued the impugned show cause notice, setting out the grounds on which the proceedings were taken out by the Commissioner which according to the petitioner was in the protective show cause notice. Subsequent thereto on 14 October 2013, the Joint Secretary, Revisionary Authority, rejected the revision as filed by the Commissioner of Central Excise upholding the admissibility of the rebate granted to the petitioner by the Commissioner (Appeals).

4. It is contended by the petitioner that the department did not adopt any proceedings against the orders passed by the Joint Secretary on the revision application filed by the Commissioner. The proceedings of the show cause notice however, had remained pending in such circumstances. However, on 5 October 2023 the Designated Officer intended to proceed with the show cause notice and for such purpose a notice fixing personal hearing on the show cause notice was issued to the petitioner.

5. The petitioner has contended that infact after such long lapse of time, having not succeeded in the revision, the recovery as intended by the show cause notice itself had become infructuous. It is submitted that in any event adjudication of the show cause notice itself would be in the teeth of the orders passed by the Commissioner (Appeals) as also confirmed by the Revisionary Authority. In the aforesaid circumstances, the submission is that the reliefs as prayed by the petitioner be granted.

6. Mr. Mishra, learned Counsel for the respondents-revenue although opposed the petition, would not dispute the factual matrix that the orders passed by the Revisionary Authority confirming the orders of the Commissioner (Appeals), had attained finality.

7. Having heard the learned Counsel for the parties and having perused the record, we find substance in the contention as urged on behalf of the petitioner that the show cause notice was itself in the nature of a protective show cause notice and more particularly, considering the grounds as set out in the show cause notice in paragraphs 7 and 8. Certainly there was no cause for the department to proceed to adjudicate the show cause notice. The contention of the petitioner is quite correct that the show cause notice has become infructuous in view of the order passed by the Revisionary Authority.

8. In the aforesaid circumstances, in our opinion, the petition needs to succeed. The petition is accordingly allowed in terms of prayer clause (a) and (b) No costs.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**