BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A(MD)No.1429 of 2015

1. The Commissioner of Central Excise,
Central Revenue Buildings,
Tractor Road,
NGO'A" Colony,
Tirunelveli-627007.

2. Mr.B.V.V.T.Prasad Naik,
Currently acting as the Commissioner of Central Excise,
Tractor Road,
NGO'A" Colony,
Tirunelveli-627007.

3. The Assistant Commissioner of Central Excise,
Central Revenue Buildings,
Tractor Road,
NGO'A" Colony,
Tirunelveli-627007. ... Appellants

vs.

V.V.Minerals,
Represented by its Managing Director,
S.Vaikundarajan,
S/o. Subbiah Nadar,
Keeraikaranthattu,
Tissayanvilai Village,
Tirunelveli District. ... Respondent

Appeal filed under Clause 15 of Letters Patent, against the order dated 28.10.2015 made in W.P(MD)No.8871 of 2015.

For Appellant : Mr.R.Nanda Kumar
Senior Standing Counsel for Customs & Central Excise

For Respondent : Mr.Kingsly Solomon

JUDGMENT

G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

Being aggrieved by the order passed by the learned Single Judge in W.P(MD)No.8871 of 2015 dated 28.10.2015, the Central Excise Department is before this Court by preferring an intra-court appeal.

2. The case of the Central Excise Department is that the respondent / writ petitioner had processed sea sand (ore) mined by them for production of Ilmenite, Rutile, Zircon etc., and cleared it without payment of central excise duty. Based on the intelligence gathered and surveillance, the department being *prima facie* satisfied that there was a violation of central excise duty, show cause notice was caused to the respondent on 26.12.2014 indicating their proposal to levy central excise duty as per the provisions of the Central Excise Act, 1944. The said

show cause notice was challenged by the respondent in a Writ Petition(MD)No.3316 of 2015 and sought for quashing the show cause notice. The High Court after considering the said prayer, dismissed the writ petition, however, directed the department to furnish the documents relied by them for causing the show cause notice. Accordingly, the department had furnished all the documents proposed to be relied by the department and receipt of the same has been acknowledged by the respondent and when the department was about to proceed on the show cause notice, the respondent sought for copy of a notification dated 01.03.2006 under letter of the Assistant Commissioner (Anti-Evasion), Tirunelveli to Custom House, Tuticorin, and few other documents which are in the nature of inter-departmental communications. This request was made after disposal of the earlier writ petition instituted by the respondent by enlarging the list of documents he needs to face the show cause notice. The department though always ready to permit the respondent to peruse the documents which are available in the office, instead of participating in the show cause notice and perusing the documents which he needs to peruse, the respondent filed Writ Petition No.8871 of 2015 to quash the letter of the department dated 12.05.2015 and also made a claim that the activity and production of the respondent is exempted from central excise duty as per the Notification No.63/95. This matter was taken up for consideration by the learned Single Judge after giving opportunity to the department. The learned Single Judge has thought fit to issue a direction to the department to furnish the documents sought by the respondent herein vide letter dated 05.05.2015 and also directed the department to consider the preliminary issue raised by the respondent regarding the application of the Central Excise Act to levy excise duty on the product they have manufactured and sold. Being aggrieved, the present appeal is filed by the department on the ground that the learned Single Judge has traversed beyond the scope of the writ petition prayer and had passed the impugned order with preconceived notion. When the earlier Writ Petition No.3316 of 2015 for the very same purpose was dismissed with direction to provide the documents relied by the department and the same have already been furnished, the respondent cannot keep on expanding his request seeking documents which are not relied upon and not relevant. The learned Single Judge failed to take note of the dilatory tactics adopted by the respondent to delay the process and had passed order which is untenable, unreasonable and unsustainable.

3. Learned counsel appearing for the appellant submitted that the impugned order directing the department to furnish documents requested by the respondent even though those documents were not relied by the department would clearly indicate that the learned Single Judge has been misdirected. Further, learned counsel also referring to the impugned order would submit that the reasoning given by the learned Single Judge citing certain judgments which are not relevant to decide the case on hand and to justify the applicability of the Central Excise Act for the product to be decided as a preliminary issue is unwarranted.

4. This Court after giving anxious consideration to the submissions and the documents placed before it, finds that on earlier round when the show cause notice was issued to the respondent, he had approached this Court expressing that he is handicapped with non production of documents relied by the department. Hence, this Court directed the department to furnish the documents relied upon and those documents had been duly served to the respondent under acknowledgement. Learned counsel appearing for the department had furnished a copy of acknowledgement of receipt of the documents listed

in Serial Nos.1 to 19 which runs to several pages. The representative of the respondent has received it and signed it with date 07.08.2015. The counsel for the department/appellant in unequivocal terms has stated that except these documents, the department is not relying upon any other documents. While so, the order of the learned Single Judge to furnish certain inter-departmental communications is unwarranted. As far as the application of the Central Excise Act for the product of the respondent, it goes without saying that it will be a part and parcel of the adjudication. The respondent will always have the right and liberty to question the application of the Act. This will be decided along with the issue involved in the show cause notice and it need not be taken as a preliminary issue and if such request is entertained, it will again prolong the proceedings and cause undue delay in completing the adjudication. Hence, clarifying the above aspects, the Writ Appeal is disposed of accordingly. No costs.

(G.J., J.) (C.K., J.)
06.02.2024

Index : Yes / No
Neutral Citation : Yes / No
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