26.08.2025
Item Nos.5-7
Ct. No.01
SM/RP

FMA/1042/2025
with
CAN/1/2025

DHANBAD FUELS PVT. LTD.
VS.
THE COMMISSIONER CGST AND CX BOLPUR COMMISSIONERATE AND ORS.

WITH

FMA/1043/2025
with
CAN/1/2025

MAAN STEEL AND POWER LTD.
VS.
THE COMMISSIONER CGST AND CX BOLPUR COMMISSIONERATE AND ORS.

WITH

FMA/1044/2025
with
CAN/1/2025

MAAN CONCAST PVT. LTD.
VS.
THE COMMISSIONER CGST AND CX BOLPUR COMMISSIONERATE AND ORS.

Mr. Arnab Chakraborty, Adv.
Mr. Aniket Chaudhury, Adv.
...For the Appellants

Ms. Manasi Mukherjee, Sr. Standing Counsel
(Through V.C.)
Mr. Bijitesh Mukherjee, Adv.
...For the Respondents

1. These three appeals are taken up analogously for hearing and are disposed of by a common judgment and order.

2. These intra-court appeals filed by the writ petitioners are directed against the orders dated 28th April, 2025, passed in WPA 1679 of 2025, WPA 1682 of 2025 and WPA 1643 of 2025 respectively by which the learned Single Bench dismissed the writ petitions challenging the order of adjudication passed by the Commissioner, Durgapur Audit Commissionerate, CGST & CX dated 24th September, 2024, levying central excise duty and penalty on the assessee, its directors and others.
3. We have elaborately heard Mr. Chakraborty, learned advocate appearing for the appellants/writ petitioners.
4. Primarily four grounds have been raised by the petitioners. The first is being as to whether the Audit Commissioner would be entitled to exercise jurisdiction and pass the order of adjudication when the Audit Commissioner places reliance on a notification issued by the Board being Notification No.14/2017-C.E.(N.T.) dated 9th June, 2017. It is submitted that this notification has been referred to the notice of personal hearing and there is a reference to Rule 3 of the Service Tax Rules which is of no relevance to the case on hand and, therefore, the Audit Commissioner has no jurisdiction to deal with the matter.
5. That apart, another subsidiary ground arising out of the same ground is that the Executive Commissioner

was the person who issued the show-cause notice before whom the reply was submitted and request letters were made to provide copies of legible documents, specifically indicating as to which of the documents are illegible and also copies of documents which were relied on in the show-cause notice for the first time and repeated representations were made in this regard and in the middle of the proceedings, the matters stood assigned to the Audit Commissionerate and, therefore, it is submitted that there is gross violation of principle of natural justice. More so, when the Audit Commissionerate did not grant a personal hearing and declined to accept the request for adjournment.

6. The third ground raised is that the demand made in the orders impugned in the writ petitions is a high-pitched demand and part of the demand is on the alleged ground of undeclared transactions when the appellants/assessees were able to provide reconciliation data to cover the transaction nearly to Rs.6 crores, which aspect was never considered by the adjudicating authority.

7. The other ground which has been canvassed is that the request of the cross-examination made by the appellants, specifically in their reply requesting for cross-examination of the transporters by specifying their names was rejected erroneously by referring to the statements recorded by the Officers/Directors of

the assessee Company, which would be irrelevant because part of the demand made in the order of adjudication is by relying upon statements of the transporters. Therefore, it is submitted that the denial of cross-examination is illegal which will go to the root of the matter thereby rendering the adjudication order as void in law.

8. We have heard Ms. Mukherjee, learned senior standing counsel on the above submissions.

9. It is no doubt true that the appellants have raised jurisdictional issue but such jurisdictional issue requires examination of facts of the case of the appellants *qua* the effect of the notification whether the order of assignment was justified and whether there is any misquoting of the relevant rules etc. which would undoubtedly require consideration of the factual position.

10. Regarding the aspect as to whether the request for adjournment was unjustly denied and that the reasons assigned by the adjudicating authority for refusing adjournment is justified or not also requires examination of facts.

11. The reconciliation data which is said to have been submitted by the assessees whether it was considered or not considered also would require examination of facts. Equally so, the issue as to whether the denial of cross-examination was just and proper would also require examination of facts.

12. Therefore, we are of the view that the appellants should exhaust the statutory appellate remedy available before the learned tribunal. As mentioned above, the assessment is a high-pitched assessment and the burden on the Directors of the Company on whom personal penalty has been imposed at very high rate will undoubtedly be a difficult proposition as 7.5% of the disputed demand is required to be paid when an appeal is filed before the tribunal. Nonetheless, the said statutory provision mandating pre-deposit as a condition precedent for preferring an appeal before the learned tribunal having been upheld by the Constitutional Courts, the appellants have no other option except to comply with this statutory condition.

13. Thus for the above reasons, we are of the view that the appellants should exercise the statutory remedy of appeal available before the learned tribunal.

14. Accordingly, the appeals along with the applications fail and are dismissed.

15. The appellants shall file the appeal before the learned tribunal within a period of 90 days from the date of receipt of server copy of this order and if the pre-deposit condition is complied with, the appeal shall be entertained by the learned tribunal and decided on merits and in accordance with law.

16. We make it clear that in the preceding paragraphs we have noted the submissions of the learned advocate appearing for the appellants to give a broad view of the

grounds which have been canvassed by the appellants but as we have relegated the appellants to avail the statutory remedy we have not gone into the merits of the contentions and the correctness of the submissions and it will be well-open to the appellants to canvass all points before the learned tribunal and equally open to the department to put forth their contentions.

17. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]