20.02.2025
Item No.
AD 11
Saswata

WPA 30178 of 2024

M/s Nafar Chandra Jute Mills Limited
versus
Assistant Commissioner, CGST & CX & ors.

Mr. Saurabh Bagaria
Mr. Indranil Banerjee
Mr. Subrata Mukherjee
...For the petitioner
Mr. Shiv Shankar Banerjee
Mr. Abhradip Maity
...For the CGST
Mr. Aryak Dutt
Mr. Arunava Ganguly
...For the respondent no. 3

1. Challenging the order dated 16th October 2024 passed by the respondent no. 1 under the Central Excise Act, 1944 (hereinafter referred to as the "said Act"), the instant writ petition has been filed.

2. Records would reveal that although a proceeding had been initiated against the petitioner on the basis of a show cause – cum- demand notice dated 8th October 2015, by order dated 18th January 2018 issued by the Assistant Commissioner of Central Tax the entire proceeding had been dropped.

3. Records would further reveal that the department had filed an appeal before the Commissioner of Appeals and by order dated 15th July 2024, the Commissioner of Appeals had set aside the order passed by the Assistant Commissioner of Central Tax dropping the proceeding, and had remanded the case back to the adjudicating authority for fresh decision. Challenging the aforesaid order, an appeal has been filed before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (CESTAT in short).

4. In the interregnum, the petitioner was served with a hearing notice in connection with the show cause notice dated 8th October 2015, by communication dated 7th October 2024, whereby the petitioner was intimated that the date of personal hearing has been fixed in the petitioner's case on 16th October 2024 at 14.30 hours. According to the petitioner, 16th October 2024 fell on the day of *Lakshmi Puja* which is widely celebrated in the State of West Bengal and is a declared holiday. In support of this contention, Mr. Bagaria learned advocate for the petitioner has placed a notification dated 9th November 2023 issued by the Government of West Bengal wherefrom it would appear that 16th October 2024 had been notified as public holiday under the N.I. Act. Let a copy of the aforesaid notification dated 9th November 2023 be retained with the record.

5. The petitioner claims that by communication dated 18th October 2024 the petitioner had informed that the notice for personal hearing was extremely short and since 16th October 2024 was a holiday on account of *Lakshmi Puja* the petitioners' advocate was not available and as such, the petitioner had requested the respondents to fix another date in the month of

November 2024. Records reveal that on 16th October 2024 itself the adjudication order had been passed.

6. Mr. Bagaria by placing before this Court the master circular on show cause notice issued by the Under Secretary to the Government of India, Department of Finance dated 10th March 2017 would submit that in ordinary course, adequate opportunity of hearing should be granted. He has also placed before this Court paragraph 14.3 of the aforesaid master circular to drive home the point that without granting adequate opportunity of hearing, no order could have been passed. In the facts as noted above, he prays that this Court may be pleased to set aside the order impugned and remand the matter back to the authority, and the authority should also be directed to consider the pendency of the appeal before the CESTAT before taking a decision in this matter and accordingly should stay his hand till such time a decision by the CESTAT is taken.

7. Mr. Banerjee, learned advocate appearing on behalf of the respondents would submit that admittedly in this case a notice was issued on 7th October 2024 intimating that a personal hearing shall be offered to the petitioner on 16th October 2024. The petitioner did not apply for an adjournment on or before 16th October 2024. The adjournment application was filed much after the order was passed.

He submits that the provision of master circular can be made applicable only when an adjournment application is filed on or before the date fixed for hearing and not after the order is passed. Having regard thereto, according to Mr. Banerjee, no interference is called for.

8. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I may note that in the instant case originally, the proceeding initiated against the petitioner was dropped by order dated 18th January 2018 passed by the Assistant Commissioner of Central Tax. On the basis of an order dated 15th July 2024 passed in connection with an appeal filed by the department, the Commissioner of Appeals had not only set aside the order but had also remanded back the matter to the adjudicating authority. The petitioner has challenged such order before the CESTAT by exercising its statutory right.

9. During pendency of such proceeding, the adjudicating authority had not only proceeded to issue a notice dated 7th October 2024 but had also concluded and disposed of the said proceeding by order dated 16th October 2024. Although, the petitioner did not appear on 16th October 2024, no attempt was made to afford a further opportunity to the petitioner, though the master circular on show cause adjudication and recovery dated 10th March 2017, specifically mandates at least three opportunity of personal hearing with sufficient interval to be provided. The manner, in which the adjudicating authority had proceeded to dispose of the aforesaid matter especially when an appeal to the very exercise of jurisdiction by the adjudicating authority was pending and without adhering to the master circular does not appear to be regular.

10. Be that as it may, the adjudicating authority, in my view ought not to have disposed of the adjudication proceeding on 16th October 2024 especially when the petitioner had remained unrepresented, and 16th October 2024 was declared to be a public holiday under the N.I.Act. The adjudicating authority while deciding the matter ought to have taken note of the public holiday declared by the Government of West Bengal by notification dated 19th November 2023 and ought not to have disposed of the said matter on the said date itself, without affording a further opportunity of hearing to the petitioner.

11. Having regard thereto, I am of the view that the order dated 16th October 2024 cannot be sustained and the same is accordingly set aside. The matter is remanded back to the adjudicating authority, who shall be free to take a decision in the matter subject to the appeal filed by the petitioner before the CESTAT.

12. With the above observations and directions, the writ petition being WPA 30178 of 2024 is accordingly disposed of.

13. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)