IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 21.03.2025

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

W.P.No.26226 of 2023

M/s.Seshasayee Paper and Boards Limited,
Erode. .. Petitioner

Vs

The Joint Commissioner,
Office of the Commissioner of Goods and
Service Tax and Central Excise,
Salem. .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India seeking for issuance of a writ of mandamus to forbear the respondent from fixing personal hearing or taking any proceedings pursuant to the show cause notice No.C.No.V/48/15/222/2007-C.Ex. ADJ (Sl.No.52/2007) (Commr), dated 11.12.2007.

For Petitioner : Mr.A.L.Somayaji, Sr.Counsel

For Respondent : Ms.Revathi Manivannan, SSC

ORDER

The petitioner has filed this writ petition challenging the impugned show cause notice dated 11.12.2007 issued by the respondent under Section 11-A of the Central Excise Act (in short “the Act”) on the following grounds:-

(a) Pursuant to the issuance of the impugned show cause notice dated 11.12.2007, the respondent has not determined the amount of duty of excise payable by the petitioner within the statutory period as prescribed under Section 11-A(11)(a)(b) of the Act, which makes it clear that pursuant to the issuance of show cause notice under Section 11-A(1) of the Act, the respondent shall determine the amount of duty of excise as per the provisions of sub-section 11(a) of Section 11-A within a period of six months from the date of issuance of show cause notice in respect of cases falling under sub-section (1) of Section of Section 11-A of the Act; or within two years from the date of notice in respect of cases falling under sub-section(4) of Section 11-A of the Act.

(b) Section 11-A of the Act deals with recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. The recovery sought for by the respondent under the impugned show cause notice from the petitioner pertains to the period from April, 2006 to February, 2007. In the instant case, the show cause notice was issued by the respondent under Section 11-A(1) of the Act to the petitioner on 11.12.2007. A detailed reply was sent by the petitioner to the said show cause notice on 21.12.2007 denying the contentions of the respondent. An additional reply was also sent by the petitioner to the respondent on 16.02.2008. After a lapse of almost 16 years, the respondent has sent a notice of personal hearing dated 28.07.2023 to the petitioner regarding the very same issue contended by the respondent through their show cause notice dated 11.12.2007.

2. The learned standing counsel appearing for the respondent would submit that there was no delay on the part of the respondent to issue a show cause notice. According to her, even as per the provisions of Section 11-A(11)(a)(b) of the Act, there is no time limit prescribed for passing the final order. According to her, since the respondent department has contested the audit objection with regard to determination of excise duty on the petitioner, there was a delay on the part of the respondent. Therefore, according to her, the question of interference by

this Court with the impugned show cause notice does not arise and on the contrary, a direction may be given to the petitioner to participate in the personal hearing proceedings and thereafter, the respondent will be in a position to pass final orders, after giving due consideration to the replies sent by the petitioner to the impugned show cause notice.

3. However, as seen from Section 11-A of the Act, several procedural steps are involved before the respondent actually determines the duty payable by the petitioner to the respondent. Section 11-A(11)(a) is the first step to be taken by the respondent for recovering the duties not levied or not paid or short-levied or short-paid or erroneously refunded. It is not in dispute that the respondent has issued the impugned show cause notice within the time limit in accordance with Section 11-A(1) of the Act. Admittedly, the petitioner had sent replies to the impugned show cause notice within the time stipulated as stated supra. The determination of duty by the respondent will arise only after affording the petitioner an opportunity of being heard, and after considering the representation given by the petitioner, if any, as seen from Section 11-A(10)(11) of the Act. In the case on hand, the procedure contemplated

under Section 11-A(10)(11) of the Act has not been followed by the respondent. Section 11-A(10)(11) of the Act reads as follows:-

> **11-A:- Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. ---**
>
> (10) The Central Excise Officer shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice.
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> (11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10) --
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> (a) within six months from the date of notice in respect of cases falling under sub-section (1);
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> (b) within two years from the date of notice in respect of cases falling under sub-section (4).

4. In the instant case, though replies were sent to the impugned show cause notice dated 11.12.2007 as early as in the year 2007 itself, the said replies have not been considered by the respondent in

accordance with the procedure contemplated under Section 11-A(10)(11) of the Act. The respondent has failed to determine the amount of duty due from the petitioner after affording an opportunity of hearing to the petitioner, and after giving due consideration to the replies sent by the petitioner to the show cause notice. Section 11-A(11) of the Act, extracted supra, also makes it clear that the respondent shall determine the amount of duty of excise payable by the petitioner within six months from the date of notice in respect of cases falling under sub-section(1); and within two years in respect of cases falling under sub-section (4). In the case on hand, the respondent has not adhered to Section 11-A(11) of the Act and till date, they have failed to determine the amount of duty of excise payable by the petitioner pursuant to issuance of the impugned show cause notice dated 11.12.2007. After a lapse of more than 16 years, the respondent has sent a notice of personal hearing dated 28.07.2023 to the petitioner pertaining to the impugned show cause notice dated 11.12.2007, which is not legally permissible in law. Any proceeding initiated by the respondent without authority under law has to be set aside by this Court. In the instant case, personal hearing notice dated 28.07.2023 has been issued by the respondent without authority under law, that too, after a lapse of 16 years. Eventhough the learned counsel for the respondent would submit that due to an audit objection there was a delay in proceeding further after the issuance of show cause notice, the said submission has to be rejected by this Court, as, for no fault on the petitioner, they cannot be penalised without authority under law. Hence, the impugned personal hearing notice dated 28.07.2023 is issued in violation of the statutory provisions and without authority under law.

5. For the foregoing reasons, impugned personal hearing notice dated 28.07.2023 as well as the impugned show cause notice dated 11.12.2007 are quashed and the writ petition is allowed. No Costs. W.M.P.No.25627 of 2023 is closed.

21.03.2025

Index: yes/no
Neutral citation: yes/no
speaking/non-speaking
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To

The Joint Commissioner,
Office of the Commissioner of Goods and
Service Tax and Central Excise,

Salem.

ABDUL QUDDHOSE,J.

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W.P.No.26226 of 2023

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