(2013) 10 AHC CK 0120

Allahabad High Court

Case No: Writ Tax No. 880 of 2013

Parmarth Iron (P.) Ltd.	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision: Oct. 9, 2013

Citation: (2014) 303 ELT 59 : (2014) 27 GSTR 460

Hon'ble Judges: Surya Prakash Kesarwani, J; Sunil Ambwani, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. We have heard Shri B.C. Rai, learned counsel appearing for the petitioner. Shri Siddharth Shukla and Shri Amit Mahajan appear for the respondents. By the impugned order the petitioner''s application for release of cash seized by seizure memo dated 26-12-2007 by the Central Excise Authorities has been deferred, until adjudication of the case as per related provisions in the matter.

2. It is submitted by learned counsel appearing for the petitioner, that the cash amounting to Rs. 5,90,000/- (Panchnama dated 10-7-2007) and Rs. 17,17,797/- (Seizure Memo dated 26-12-2007) was seized by the Director General of Central Excise (Intelligence), New Delhi. He submits that the impugned order dated 8-5-2013 does not take into consideration the powers vested in the Commissioner of Central Excise, Meerut u/s 110A of the Customs Act, 1962, which are applicable where the seizure were made under the Central Excise Act, 1944, relying on provisions of Section 110 of the Customs Act, 1962.

3. It is submitted by Shri B.C. Rai, that earlier the petitioner had filed a writ petition for return of the non-relied upon document and hard copy of the relied upon document. The writ petition was allowed. A Special Appeal No. 741(D) of 2010 filed by the department against the order of learned Single Judge was partly allowed on 29th November, 2010 Commissioner of Central Excise Vs. Parmarth Iron Pvt. Ltd., ,

with directions as follows:-

16. We, therefore, have no hesitation in holding, that there is no requirement in the Act or Rules, nor do the principles of natural justice and fair play require that the witnesses whose statements were recorded and relied upon to issue the show cause notice, are liable to be examined at that stage. If the Revenue chooses not to examine any witnesses in adjudication, their statements cannot be considered as evidence. However, if the Revenue chooses to rely on the statements, then in that event, the persons whose statements are relied upon have to be made available for cross-examination for the evidence or statement to be considered.

17. We are, therefore, clearly of the opinion that there is no right, procedurally or substantively or in compliance with natural justice and fair play, to make available the witnesses whose statements were recorded, for cross examination before the reply to the show cause notice is filed and before adjudication commences. The exercise of cross-examination commences only after the proceedings for adjudication have commenced.

Having said so, in our opinion, the first question is answered accordingly.

18. Considering the second contention, it is true that in view of the Adjudication Manual as also the judgment in Sanghi Textile Processors (P.) Ltd. (supra), the assessee is entitled to the reasonable cost incurred for getting the copies of the documents. In the instant case, there is no dispute that a soft copy containing the documents has been made available. The grievance of the respondent was that he must be given hard copies of the documents as some of the documents are ineligible as shown from the soft copies. Considering the fact that the documents have been made available in the form of a C.D., one can read the same. In our opinion, that would amount to sufficient compliance though may not be strict compliance. In case, mere are any documents, which are not clear, then in that event, if the respondent applies for those documents, then the Department shall, within 15 days of the receipt of the letter in respect of those copies, make them available to the respondent herein at the Department''s cost.

19. Having said so, in our opinion, the impugned order insofar as the cross-examination is concerned, is liable to be set aside. Accordingly, it is set aside. Insofar as providing the document is concerned, it shall be in terms of what has been stated above.

20. The appeal is disposed of, accordingly.

4. Learned counsels appearing for the respondents would submit that the provision of Section 110A of the Customs Act, 1962 has not been made applicable for release of seized goods u/s 110 of the Customs Act, 1962 by the Central Excise Authorities as u/s 12 of the Central Excise Act, 1944 the notifications have been issued. These notifications, however, had not attracted the provision of Section 110A of the

Customs Act, 1962 for release of any goods, documents or things seized u/s 110. He submits that in any case the application for release of cash has not been dismissed. It has only been deferred until the adjudication of the matter.

5. We may point out here that in the earlier writ petition against which Special Appeal No. 741(D) of 2010 was filed and decided on 29-11-2010, the petitioner could not explain as to why the reply has not been filed to the show cause notice issued as long back as on 7-7-2008.

6. We are informed that the reply has not been filed to the show cause notice so far. Shri B.C. Rai states that the preparation of reply is under process.

7. We are unable to appreciate as to why the petitioner did not seek for release of cash in the writ petition filed earlier and as to why he has taken six years'' time to make an application for release of cash and has relied upon the provisions which are not attracted in the case.

8. The judgment of Supreme Court in Union of India and Others v. Patiala Casting Private Limited (2011 (11) SCC 562 : 2011 (266) E.L.T. 37 (S.C.)) cited by Shri B.C. Rai is a case relating to Customs Act and not under the Excise Act.

9. We may observe here that the Commissioner of Central Excise, Meerut has not rejected the application for release of cash. He has only deferred the application until the adjudication is complete.

10. In view of the fact, that the petitioner had not filed the reply to the show cause notice for last five years, we do not propose to interfere in the matter.

11. We are informed by learned counsels appearing for the respondents that the petitioner is not appearing before the adjudicating authority on the date fixed in the matter. The dates were fixed on 21-1-2013, 8-5-2013, 26-7-2013 and 20-9-2013 for defence reply. The petitioner has not appeared on any of these dates. The writ petition is dismissed.