Hindustan Petroleum Corporation Ltd. Vs The Assistant Commissioner of Customs

Court: Calcutta High Court

Date of Decision: Dec. 10, 2014

Acts Referred: Central Excises and Salt Act, 1944 â€" Section 11AC

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Advocate: Avra Majumder and Sudeshna Majumder, Advocate for the Appellant; R.N. Das and Subir Saha, Advocate for the Respondent

Judgement

Harish Tandon, J.
This writ application is filed assailing the order dated 29th January, 2014 passed by the Custom, Excise and Service

Tax Appellate Tribunal dismissing an application for waiver of pre-deposit of the duty demanded and equal amount of penalty under Section

11AC of the Central Excise Act, 1944. The appellant tribunal have not dismissed the said application on merit but on the technicality that the

appellant did not produce the clearance from CoD nor produce any document that the application seeking clearance is pending. The petitioner

relies upon an unreported judgment of this Court delivered in WP No. 1009 of 2012 where the similar and identical point was raised and the

coordinate bench held:

By an order dated September 11, 1991 which is reported in Oil and Natural Gas Commission and Others vs. Collector of Central Excise, (1992)

61 ELT 3, the Supreme Court observed that Public Sector Undertakings of Central Government and the Union of India should not fight their

litigations in Court. Thereafter an order dated 11.10.1991 followed, directing the Government of India to set up a committee to monitor such

disputes. Pursuant to the aforesaid order a committee was constituted. The committee was initially called High-Powered Committee (HPC). The

committee was later called Committee of Secretaries (COS).

In the ONGC-III case which is reported in Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others, the

Hon"ble Supreme Court directed that in the absence of clearance from CoS any legal proceedings should not be proceeded with. A further order

dated 20th July, 2007 was passed in the fourth ONGC case, extending the concept of dispute resolution by High-Powered Committee to

amicable resolution of disputes involving the State Governments and their Instrumentalities. The question of requirement of clearance from CoD

was referred to a five Judge Constitution Bench. By a judgment and order dated 17th February, 2011 the Constitution Bench recalled the earlier

orders of the Supreme Court observing as follows:

"9. The idea behind setting up of this Committee, initially, called a High-Powered Committee (HPC), later on called as ""Committee of Secretaries

(CoS) and finally termed as ""Committee on Disputes"" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations

between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no

litigation comes to Court without the parties having had an opportunity of conciliation before an in house committee. [see para 3 of the order dated

7.1.1994 (supra) Whilst the principle and the object behind the aforestated Orders is unexceptionable and laudatory, experience has shown that

despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation.

We have already given two examples hereinabove. They indicate that on same set of facts, clearance is given in one case and refused in the other.

This has led a PSU to Institute a SLP in this Curt on the ground of discrimination. We need not multiply such illustrations. The mechanism was set

up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases

of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of

regulatory laws in several cases there could be overlapping of jurisdictions between, let us say, SEBI and Insurance regulators. Civil appeals lie to

this Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by CoD. In such cases, grant of clearance to one and not

to the other may result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario indicated above,

we are of the view that time has come under the above circumstances to recall the directions of this Court in its various orders reported as (i) Oil

and Natural Gas Commission and Another Vs. Collector of Central Excise, , (ii) Oil and Natural Gas Commission Vs. Collector of Central Excise,

and (iii) Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others, .

10. In the circumstances, we hereby recall the following Orders reported in : 4 (i) Oil and Natural Gas Commission and Another Vs. Collector of

Central Excise, Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, (ii) Oil and Natural Gas Commission Vs. Collector

of Central Excise, (iii) Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others, Oil and Natural Gas

Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others, (iv)For the aforestated reasons, I.A. No. 4 filed by the assessee in

Civil Appeal No. 1903/2008 is dismissed."

The orders of the Hon''ble Supreme Court which required CoD clearance having been recalled, the learned Tribunal patently erred in dismissing

the said application and the appeal on the purported ground that SAIL had not produced evidence of having applied for clearance from the CoD

or on the ground that SAIL had not produced any clearance from the CoD.

As held by the Supreme Court in the case of M.A. Murthy Vs. State of Karnataka and Others, a decision of the Supreme Court enunciating a

principle of law is applicable to all cases, irrespective of stage of pendency thereof because it is assumed that what is enunciated by the Supreme

Court is, in fact, the law from the inception unless, of course, the Supreme Court expressly indicates that the decision would have prospective

effect. May be, as contended by Mr. Maity, the appeal was filed before 17th February, 2011 when the Constitution Bench judgment of the

Supreme Court recalling the earlier orders was pronounced. The orders whereby clearance was required having been recalled, the appeal and the

stay application could not have been dismissed on the ground of want of clearance or want of an application for clearance.

2. In view of the law enunciated in the above judgment, the stand of the tribunal that the application is not maintainable because of non-production

of clearance from CoD. is not sustainable.

3. Accordingly the impugned order is hereby set aside.

4. The tribunal is directed to dispose of the said application afresh in accordance with law within two months from the date of communication of

this order after giving an opportunity of hearing to all the interested parties.

5. This writ petition is disposed of.

6. Since the writ petition is disposed of at the motion stage without calling for the affidavits, the allegations contained in the writ petition shall not be

deemed to have been admitted by the respondents.

7. There will be no order as to costs.