

Madhya Pradesh High Court

Elora Tobacco Co. Ltd

20-05-2024

Judgement

1. With Consent of the parties, heard finally at motion stage.

The present writ petition has been filed by the petitioner seeking following reliefs :-"(i) Allow the present Writ Petition;

(ii) Issue an appropriate writ/ orders/ directions in the nature of Mandamus directing the Respondents to release/ provide the original copy of documents seized by the Respondent from the premises of the Petitioner during various searches conducted and not relied upon in the show cause notices dated 08.06.2022 and 03.08.2022, to the Petitioner in a time-bound manner.

(iii) Issue an appropriate writ/ orders/ directions in the nature of Mandamus directing the Respondents to allow the Petitioner to submit detailed reply within a period of 30 (Thirty) days from the release/ provision of the original copy of documents seized by the Respondent from the premises of the Petitioner during various searches conducted and not relied upon in the show cause notices dated 08.06.2022 and 03.08.2022 to the Petitioner.

(iv) Issue an appropriate writ/ orders/ directions in the nature of Mandamus directing the Respondents to allow the Petitioner to cross- examine the witnesses whose evidence has been relied upon in the show cause notices upon release/ provision of the original copy of documents seized by the Respondent from the premises of the Petitioner during various searches conducted and not relied upon in the show cause notices dated 08.06.2022 and 03.08.2022 to the Petitioner;

(v) Issue an appropriate writ/ orders/ directions in the nature of Mandamus directing the Respondents to provide personal hearing to the Petitioner upon release/ provision of the original copy of documents seized by the Respondent from the premises of the Petitioner during various searches conducted and not relied upon in the show cause notices dated 08.06.2022 and 03.08.2022 to the Petitioner;

(vi) Pass any such orders which this court may deem fit and proper under the facts and circumstances of the matter."

2 . Learned Counsel for the petitioner has submitted that Respondent No. 2 issued show cause notices bearing No. 25/DGGI/ RUI/ADD/GST/ 2022-2023 dated 08.06.2022 and 50/DGGI/ RUI/ADG/C.Ex./ 2022-2023 dated 03.08.2022 to petitioner respectively whereby a total demand of GST and Cess Rs. 19,462,273,010/- (Rupees Nineteen Hundred Forty-Six Crores Twenty-Two Lakhs Seventy Three Thousand and Ten Only) comprising of CGST of Rs. 75,82,19,416/-, SGST of Rs. 75,82,19,416/- and Cess of Rs. 1794,58,34,178/- has been issued against the Petitioner Company and other persons under the false pretext of clandestine supply of filter cigarettes by the Petitioner Company without cover of invoices and tax payments for the period from 01.07.2017 to 10.06.2020. In order to enable the petitioner to file reply and contest the said show cause notices dated 08.06.2022 and 03.08.2022 in adjudication proceedings, the petitioner needs certified copies of relied documents in the said show cause notices and original copy of non-relied documents and hence, the petitioner wrote letters dated 20.07.2022, 08.08.2022, 20.11.2023, 18.03.2024 and 03.04.2024 seeking original copy of non-relied documents from the petitioner but the same have not been provided to the petitioner till date whereas next date of personal hearing has been fixed on 29.05.2024 for filing reply but

petitioner has been disabled in filing the reply in absence of certified copy of relied documents and original copy of non-relied documents. It has been argued by learned counsel for the petitioner that it was the duty of the Respondents to release the non-relied upon documents within a period of 30 (thirty) days from the issuance of the show cause notice in light Section 67 (3) of the CGST Act and Rule 27 of the Central Excise Rules 2017 but the Respondent have failed to provide the original copy of the non-relied documents till date. In support of the said submission, counsel for the petitioner has relied upon judgment of this court in *Methodex Systems Ltd. v. Union of India* (2000) 01 MP CK 0061.

3. Learned Counsel for the petitioner has further submitted that the petitioner has the right to cross examine witnesses whose evidence has been relied upon in the show cause notices dated 08.06.2022 and 03.08.2022 during adjudication proceedings, upon release/provision of the original copy of documents seized by the Respondent from the premises of the Petitioner during various searches conducted and not relied upon in the show cause notices dated 08.06.2022 and 03.08.2022. Hence it is submitted that Respondent be directed to permit the petitioner to cross examine witnesses whose evidence has been relied upon in the show cause notices. In support of the said submission, counsel for the petitioner has relied upon judgment of Hon'ble Apex Court in *Andaman Timber Industries v. Commissioner of Central Excise* 2016(15) SCC 785 and *Gujrat High Court in Rajputana Stainless Ltd. v. Union of India* (2023) 23 GSTR-OL 583.

4. Per Contra, Learned Counsel for Respondents has submitted that he has no objection if original non-relied documents are ordered to be returned to the petitioner and they are ready to supply the original non-relied documents which are available with the Respondent as per the list of documents enumerated in Seizure Memos which are non-relied in show cause notices dated 08.06.2022 and 03.08.2022. It has been argued by learned counsel for the Respondents that so far as the right to cross-examine is concerned, the said right is to be exercised by filing appropriate application seeking right to cross-examine before the adjudicating authority, and this is not the forum to seek directions in the nature as prayed for.

5. Heard learned Counsel for the parties and perused the record.

6. It is apparent from bare perusal of Section 67 (3) of the CGST Act and Rule 27 of the Central Excise Rules 2017 that it is the duty of Respondent to release the non-relied upon documents within a period of 30 (thirty) days from the issuance of the show cause notice. Section 67 (3) of the CGST Act and Rule 27 of the Central Excise Rules 2017 reads as hereunder:

"Section 67 (3)- The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice. "

'Rule 27- The books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of notice under the Act or the rules made thereunder, shall be returned within thirty days of the issue of said notice or within thirty days from the date of expiry of the period for issue of said notice:"

7. Provided that the Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be, may order for the retention of such books of accounts or documents, for reasons to be recorded in writing and the Central Excise Officer shall intimate to the assessee or such person about such retention."

8. In the said context, we are in conformity with the view of this court as taken in *Methodex Systems Ltd. v. Union of India* (2000) 01 MP CK 0061, in which it has been held as hereunder:-

" Once it is shown to the department or the department feels that the documents are not required by the department and the department is of the considered opinion that it is not relying upon the documents, then, it is duty bound to return the records. They have no authority either under the law or under the circulars to sit tight over the records and refuse to return the same. The department has no authority under the law to keep the records with it."

9. In view of the above, this court is of the considered opinion that, besides the certified copies of relied documents which goes without saying are necessary for filing reply and preparing defence, the petitioner is entitled to receive original copies of non-relied documents so as to enable him to prepare his defence/reply as fair hearing requires that petitioner is given due opportunity to raise all defences which are available to him

under the law on the basis of the documents, facts, circumstances and the legal provisions as the petitioner deems appropriate.

10. So far as the right of petitioner to conduct cross-examination of witnesses whose evidence has been relied upon in the show cause notices 08.06.2022 and 03.08.2022 during adjudication proceedings is concerned, this court is of the considered opinion that right of fair hearing and personal hearing requires that the petitioner be given right to cross examine witnesses whose evidence has been relied upon in the show cause notices dated 08.06.2022 and 03.08.2022 and it is expected from the adjudicating authority that the said right to cross-examine would be afforded to the petitioner at appropriate stage of proceedings, as principles of natural justice are required to be adhered to while conducting adjudication proceedings. At this juncture, fruitful reference can be made to judgment of Hon'ble Apex Court in *Andaman Timber Industries v. Commissioner of Central Excise* 2016 (15) SCC 785 in which it has been held as hereunder:-

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause.

We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal."

(Emphasis Supplied)

11. Resultantly, in view of the foregoing discussion, this petition deserves to be allowed and is hereby allowed. As a consequence, we deem it appropriate to direct the Respondents to handover all the original documents to petitioner which have been seized by them and not relied on by Respondents while issuing Show Cause notices dated 08.06.2022 and 03.08.2022, so that the petitioner is enabled in submitting his reply. It is further directed that upon receipt of original documents by Petitioner, the petitioner shall submit his reply within a period of 30 days and the Respondents shall adjudicate the case of the petitioner on its own merits after receipt of reply by affording due opportunity of hearing to the petitioner. Needless to state that petitioner shall have the right to cross examine witnesses whose evidence has been relied upon in the show cause notices dated 08.06.2022 and 03.08.2022 at appropriate stage in adjudication proceedings and the petitioner shall be at liberty to move appropriate application at appropriate stage for exercising the said right, in the course of being afforded personal hearing.

12. It is made clear that this court has not expressed anything on the merits of the case.

13. No order as to costs.