

Rohit Ferro Tech Ltd. Vs. The Chief Commissioner of Central Exercise and Ors.

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Court : Kolkata

Decided On : Apr-01-2016

Judge : Sanjib Banerjee

Appellant : Rohit Ferro Tech Ltd.

Respondent : The Chief Commissioner of Central Exercise and Ors.

Judgement :

OD-1 WP No.305 of 2016 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE ROHIT FERRO TECH LTD.Versus THE CHIEF COMMISSIONER OF CENTRAL EXERCISE & ORS.BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date : 1st April, 2016.

Appearance: Mr.S.K.

Mehta, Adv.Mr.P.K.

Roy, Adv.Mr.K.K.

Maiti, Adv.The Court : The grievance of the petitioner is that an order has been made by the Chief Commissioner of Central Excise under a notification of March 21, 2014 on the basis of a proposal forwarded by the Durgapur Commissionerate without a copy of such proposal being made available to the petitioner or the

allegations against the petitioner that may be contained in such proposal being disclosed to the petitioner.

It appears that a raid was conducted at the petitioners manufacturing facility in Durgapur in September, 2015.

According to the petitioner, on the visual estimation of the raiding authority substantial shortage of goods was discovered though an accurate verification of the stock was not conducted.

Following such alleged visual joint stock verification report, a demand of Rs.1,50,05,658/- on account of excise duty was claimed.

The petitioner says that the petitioner has not objected to the payment of such excise duty, since the payment would be held to the credit of the petitioner and the same would be subject to an order of adjudication as to the shortage of goods.

The petitioner refers to a notice of November 30, 2015 issued by the office of the Chief Commissioner requiring the petitioner to show cause why appropriate steps would not be taken against the petitioner in terms of the notification of March 21, 2014.

The petitioner replied to the notice of November 30, 2015 on February 18, 2016 and the petitioner referred to the proposal of the Durgapur Commissionerate not being supplied to the petitioner.

The petitioners representative attended a hearing and, thereafter, the impugned order of March 15, 2016 was passed on the basis of allegations contained in the proposal of the Durgapur Commissionerate which neither the petitioner nor the petitioners representative had been allowed to inspect.

The notification of March 21, 2014 permits a Chief Commissioner to examine any proposal sent by any Commissioner or Additional Director General for the purpose of forming a reasonable belief that the person has knowingly done or contravened anything specified in the FIRs.paragraph of the notification.

The notification also requires the concerned person to be afforded an opportunity of hearing before an order is passed thereunder.

There is no doubt that in couRs.of the joint verification of the stock at the petitioners manufacturing facility conducted on September 22-23, 2015 substantial shortage of goods was discovered.

However, such discovery has not culminated in any adjudication finding the petitioner guilty of actually evading duty.

The demand raised by the authorities has been promised to be paid by the petitioner, though only a third of the amount may have been tendered by now.

In such circumstances, merely because on a visual inspection of the petitioners manufacturing facility shortage of stock was discovered, would not, by itself, and without any adjudication being completed in such regard, entitle the Chief Commissioner to resort to penal measures against the petitioner.

However, it may have been possible for other anomalies to be discovered in couRs.of the raid and there is no doubt that such other anomalies find reference in the proposal forwarded by the Durgapur Commissionerate to the Chief Commissioner.

But the show-cause notice of November 30, 2015 issued by the Chief Commissioner to the petitioner did not append a copy of the proposal nor did such notice set out the salient contents of the proposal for the petitioner to make a meaningful representation in such regard.

Since it appears from the order impugned dated March 15, 2016 that the proposal was not made over to the petitioners representative in couRs.of the personal hearing, the petitioner only knows that stock shortage was discovered in couRs.of the raid in September, 2015, but the petitioner is not aware of any other misgivings that the authorities may harbour against the petitioner.

In such circumstances, the impugned order of March 15, 2016 can be faulted for matters prejudicial to the petitioner being taken into consideration without

reference to the petitioner.

Neither the notice of November 30, 2015 nor in couRs.of the opportunity afforded to the petitioners representative of a hearing, was the proposal of the Durgapur Commissionerate or the allegations or perception as to misconduct reflected therein made known to the petitioner.

Since the opportunity afforded to the petitioner appears to have been a meaningless exercise without the petitioner being confronted with the material against the petitioner as may have been contained in the proposal forwarded by the Durgapur Commissionerate to the Chief Commissioner, the order impugned dated March 15, 2016 cannot be sustained.

Accordingly, such order is liable to be set aside.

However, since it is evident that the petitioner has not tendered payment of the entire sum of Rs.1,50,05,658/- pursuant to the joint stock verification conducted in September, 2015, the order of March 15, 2016 will remain unconditionally stayed till the close of working hours of April 5, 2016 and, thereafter, the same will stand set aside, subject to the entire balance payment in respect of the above amount having been tendered by the petitioner to the respondent authorities.

It is also made clear that the Chief Commissioner will be entitled to issue a fresh notice to the petitioner to take appropriate steps under the notification of March 21, 2014, subject to the Chief Commissioner making the petitioner aware of the material against the petitioner contained in any report or proposal that the Chief Commissioner may rely on for such purpose.

Since this petition has been disposed of without considering the petitioners challenge to the constitutionality of the notification of March 21, 2014, such question is left open and the disposal of this petition should not prejudice the petitioner on such count.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.) bp.

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