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Deepak D. Gupta Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-12-1994

Reported in : (1994)(72)ELT332TriDel

Appellant : Deepak D. Gupta

Respondent : Collector of Central Excise

Judgement :

1. Shri Deepak D. Gupta, the sole proprietor of M/s. Usha Electronics, C-28, Sector 7, Noida (U.P.) have filed an appeal being aggrieved from the order passed by the Collector of Central Excise, Meerut. A stay application duly supported with an affidavit was also presented simultaneously. The notice of hearing was issued for listing of the stay application. Shri R. Santhanam, learned Advocate who has appeared on behalf of the appellant pleaded that there are 12 show cause notices. Out of 12, 8 show cause notices were issued by the Superintendent of Central Excise, 2 show cause notices by Additional Collector of Central Excise, 1 show cause notice by Deputy Collector and 1 show cause notice by Assistant Collector. Shri Santhanam, learned Advocate pleaded that there was a search at the appellant's business premises on 10-11-1987 and the Revenue Authorities seized all the records of the appellant. He pleaded that the Adjudicating Authority viz. Collector has passed one consolidated order disposing of all the 12 show cause notices. He pleaded that out of 12 show cause notices, the appellant has not been able to file reply to the show cause notices dated 22-4-1991 and 7-5-1991 issued by the Additional Collector which appear on page Nos. from 145 to 188 of the

paper book. Shri Santhanam fairly stated that since it is a common order, it will not be proper for the Bench to segregate the order in a pieceful manner. He pleaded that in spite of oral as well as written requests by the appellant from time to time, no documents on the basis of which pertaining to these show cause notices were supplied to him. He pleaded that the records are still under the custody of the Revenue Authorities and as such, there is denial of principles of natural justice. In support of his arguments, he referred to a decision in the case of Sanghi Textile Processors (P) Ltd. v. Collector of Central Excise reported in 1993 (65) E.L.T. 357. He drew the attention of the Bench to page Nos.

191-192 of the paper book vide letters dated 24-5-1988 and 14-12-1993 respectively written by the appellant to the Collector and Assistant Collector for the supply of the documents and facility to consult the record. Thereafter, 10 days before the date of hearing viz. on 14-12-1993, the appellant has again requested for the supply of the records book has been denied and thus there is a denial of principles of natural justice. He further argued that it is a sole proprietary concern the Revenue Authorities have imposed two penalties separately on the sole proprietary concern as well as on Shri Deepak D. Gupta which is not correct in the eyes of law. In support of his argument, he cited a decision in the case of Universal Commercial Corporation v.Collector of Customs, Delhi reported in 1994 (69) E.L.T. 150 (Tribunal). He pleaded that in case, the appellant is desired to deposit the duty amount of Rs. 13,21,360.93 and penalty at Rs. 15 lakhs, it will amount to undue hardship. He also argued that on merits, the appellant has got a good case since the appellant is agitating the denial of principles of natural justice. He pleaded for remand of the matter to the Adjudicating Authority for giving an opportunity to examine the records and also the Revenue Authorities should supply him the copies of the documents to enable the appellant to file replies to the show cause notices. He pleaded for dispensing with the pre-deposit of the duty and penalty amounts and thereafter for remand of the matter.

2. Shri A.K. Singhal, learned JDR who has appeared on behalf of the respondent pleaded that prima facie the Revenue Authorities have got a good case on merits. He fairly agreed with the reply to the show cause notices and the appellant should have been supplied with the copies of the documents which are being referred to

in the show cause notices and also allow him for inspection in accordance with law. He further stated that in view of these circumstances, he does not object to the dispensing with the pre-deposit of the duty and penalty amounts and thereafter remand the matter to the Adjudicating Authority having jurisdiction.

3. We have heard both the sides and have gone through the facts and circumstances of the case. Learned Advocate Shri Santhanam had brought to our notice the 12 show cause notices dated 22-4-1991 and 7-5-1991 and the appellant has not been able to file replies to the show cause notices since the appellant did not have the documents to enable to reply the SCN. The appellants had duly requested that Revenue Authorities for inspection of all the records as well as for supplying all the certified copies. The letters dated 24th May, 1988 and 14-12-1993 are reproduced below: "Kindly refer to show cause notice issued by Assistant Collector, Central Excise, Noida vide his C. No. V(18)/Prev/UE/629/87/3358, dated 25/26-4-1988.

Since all our records have been taken away by your officers, we would request you to allow us to have photocopies thereof to enable us to file our defence reply.

In the show cause notice, we find that several annexures have been indicated as enclosed with the notice, but we have got annexures 'A', 19 & 20 only. You are, therefore, requested to supply the remaining annexures as early as possible. In the meantime, we request you to extend the period of filing our defence reply by one month after we are supplied the aforesaid documents and facility to consult our records.

We however, deny the allegations made in the show cause notice and we would be submitting our detailed defence reply after the receipt of above mentioned documents." "This is in reference to the above mentioned case in which we have been asked to appear before your goodself on 14-12-1993 at 11.30 hrs.

The above mentioned show cause notice was issued from your office on 25/26-4-1988. On 24th May, 1988, we had written a letter to the Collector's office which was sent by Regd. post and was received on 27-5-1988 a copy of which was sent to the office of the Assistant Collector, Noida.

We may point out that there are several annexures indicated as enclosed with the notice, but we have got annexures 'A' 19 & 20 only, failing which we are unable to file our defence reply. You are therefore, requested to supply the remaining annexures as early as possible so that after scrutinisation, we can file the defence reply. We however, deny the allegations made in the show cause notice and we would be submitting our detailed defence reply after the receipt of the above mentioned documents.Sanghi Textile Processors (P) Ltd. v. Collector of Central Excise reported in 1993 (65) E.L.T. 357. Para No. 2 from the said judgment is reproduced below : "2. The reasonable and pragmatic solution is to require the Collector to have a meeting with petitioners and their learned counsel to find out a practical way of identifying essential documents required to be made copies of. It would also, perhaps, be appropriate for the Collector to sift the seized documents and as far as practicable at this stage, to identify the documents essentially necessary for the department so that the non-essential surplusage could be weeded out to the extent possible to reduce the number of documents which the petitioner may make copies of." In view of the above discussion, we are of the view that there was denial of principles of natural justice. Since one consolidated order has been passed in all the 12 show cause notices, it will not be proper for the Tribunal to segregate the quantum of duty and penalties. The order is to be seen as a whole. In these circumstances, we are of the view that if the appellant is desired to deposit the duty amount of Rs. 13,21,360.98, penalty at Rs. 13 lakhs of M/s. Usha Electronics and on Shri Deepak D. Gupta at Rs. 2 lakhs, it will amount to undue hardship.

We dispense with pre-deposit of the same.

4. Now coming to the prayer of the learned advocate for the remand of the matter, we are of the view that since there is a denial of principles of natural justice, we are of the view that it is a fit case where the matter should be remanded. Shri A.K. Singhal, learned JDR has also got no objection for the remand of the matter in view of the facts and circumstances explained by the learned advocate. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority having jurisdiction. We further direct that the Adjudicating Authority shall supply the copies of the seized documents on which the SCNs. are

based and also allow the appellants to inspect the records in accordance with law. It is further directed that an opportunity of personal hearing may be granted to the appellant in respect of 12 show cause notices. It is also directed that the appellant shall co-operate with the Revenue Authorities for the completion of the adjudication proceedings. In view of the above discussion, the stay application is allowed. The appeal is also allowed by way of remand.

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