Dhirish Traders Vs. Union of India

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Court : Chennai

Decided On : Sep-02-1991

Reported in : 1996(54)ECC143; 1995(80)ELT481(Mad)

Judge : Raju, J.

Appeal No. : Writ Petition Nos. 8054 and 8055 of 1983

Appellant : Dhirish Traders

Respondent : Union of India

Judgement :
ORDER

1. The Writ Petition No. 8054 of 1983 has been filed for a writ of certiorarified mandamus to call for the records and to quash the order of the second respondent in S. 30/824/79/ACC, dated 18-5-1983 and consequently direct the second respondent not to enforce the same. The Writ Petition No. 8055 of 1983 has been filed seeking for a writ of certiorari to call for and to quash the proceedings No. S. 30/824/79/ACC, dated 23-9-1980.

2. The order impugned in the Writ Petition No. 8054/83 is in effect as against the demand of the writ petitioners and it is unnecessary for me to go into the details to the merits of the claim at this stage having regard to the manner of disposal, I intend to give these writ petitions.

3. It is a matter on record that originally the Assistant Collector passed an order dated 12-2-1980 confirming the demand raised against the petitioners, and that on appeal it came to be set aside by the Appellate Collector of Customs in his proceedings dated 2-5-1980. The Appellate Collector ordered the lower authority, namely, the Assistant Collector to de novo consider the matter and pass appropriate orders and for that purpose the proceedings have been remanded to the Assistant Collector. Thereupon the Assistant Collector by his proceedings dated 23-9-1980 once again confirmed the demand earlier made. Aggrieved against the said proceedings and consequential steps taken, the above writ petitions have been filed.

4. The petitioners in paragraph 11 of the affidavit has contended as follows :-

'The Assistant Collector, referred to the order of the Appellate Collector, in his order dated 23-9-1980 but passed the same order as the one which was passed by his predecessor. He confirmed the demand for Rs. 52,875/-. No personal hearing was given and no show cause notice was given at the stage asking us to explain the matter further. There was total non-application of mind and a failure to go into the matter in detail. The matter was dealt with arbitrarily and capriciously and in violation of the principles of natural justice and a total disregard of the provision of the Customs Tariff Act and the Rules referred to above.'

On the basis of the said averment it is contended that the writ petitioner has been denied an effective opportunity to defend himself against the levy proceedings.

5. Mr. P. Narasimhan, Senior Central Government Standing Counsel submits that having regard to the lapse of time, it is not possible to categorically state whether any opportunity has been given or not, but at the same time the learned counsel would state that on the basis of the order dated 23-9-1980 there is no indication of the Assistant Collector of Customs, having given any such opportunity to the writ petitioners. It is in the light of the said position the plea of the petitioner that without giving any opportunity to the petitioner the Assistant Collector, after the order of remand by the Appellate Collector, has chosen to pass the impugned order unilaterally requires consideration. Right to participate in the remanded proceedings is an effective right and the denial of the same constitutes violation of

the principles of natural justice, particularly when the writ petitioner is sought to be saddled with monetary liability Without going into the merits of the claims, made on behalf of the petitioner as well as the department, the impugned proceedings are quashed on the ground of denial of opportunity and the Assistant Collector of Customs - the second respondent is directed to restore the proceedings to his file, give fresh opportunity to the writ petitioners and thereafter pass orders on merits and in accordance with law. Once the order dated 23-9-1980 goes, the proceedings dated 18-5-1983 also should go. The writ petitions are allowed and ordered in the above terms. No costs.