THE HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No.18137 of 2010

In the matter of an application under Articles 226 & 227 of the Constitution of India.

M/s. Bindal Sponge Ltd.
and another ..... Petitioners

-Versus-

Union of India and another ..... Opp. Parties

For Petitioner : M/s. L.Pangari, B.Jena, A.K.Das & S.K.Mishra

For Opp. Parties : Mrs. Mrinalini Padhi
Senior Standing Counsel,
Central Excise Customs &
Service Tax Department.

P R E S E N T :

THE HON'BLE MR. JUSTICE INDRAJIT MAHANTY
&
THE HON'BLE MR. JUSTICE B.N.MAHAPATRA

Date of Order : 30.03.2015

I.Mahanty, J. In the present writ application, challenge has been made to an order dated 27.8.2010 issued on 31.8.2010 passed by the Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-1 whereby, the Commissioner (Opposite Party No.2)

confirmed the penalty of amount of Rs.3,77,43,227/- for recovery of the amount from the petitioner under Section 11AC of the Central Excise Act, 1944 (herein after referred to as the Act, 1944) apart from penalty of Rs.50,00,000/- against Sri Neeraj Goel, Managing Director as well as further Rs.10,00,000/- against Sri Piyush Gupta, the authorized signatory and power of attorney holder of the petitioner-company under Rule 26 of the Central Excise Rules, 2002.

2. Learned counsel for the petitioners essentially presses the plea that there has been violation of natural justice as well as the Central Excise Act, 1944 and no adequate opportunity was afforded to the petitioner to represent his case, prior to imposition of said penalty. In this regard, our attention was drawn to Para-4 of the impugned order under Annexure-15 to the writ application wherein, it is clear that an intimation was issued to the petitioner fixing the period of personal hearing during 11.05.2010 to 14.5.2010 and the petitioner-company vide letter dated 10.5.2010 requested for adjournment of the hearing. Since the adjudicating authority was under order of transfer, fresh hearing was fixed to 21.6.2010, on which date, the petitioner once again prayed for an adjournment and the matter was fixed to 29.6.2010. Prior to the date, i.e. on 25.6.2010, the petitioner made another request for adjournment for a period of two months on the plea that the averments made in the notice are voluminous and some of the relied upon documents were dim (unclear). Accordingly, the last and final date of hearing was fixed to

12.7.2010 and purportedly communicated to the petitioner orally by the adjudicating authority purportedly during hearing of another case of the same party, whereafter he claims that the formal communication issued to the petitioner on 2.7.2010 sent through speed post but admittedly, no one showed for personal hearing on the date so fixed.

3. It is further stated in the impugned order that vide letter dated 16.7.2010, the petitioner sought to re-fix the date of hearing to some other date with adequate prior notice on the ground that the hearing intimation sent from the office of the Commissioner had been received by the petitioner on 14.7.2010, i.e. after 12.7.2010 on which date, the purported date of hearing had been fixed. The impugned order further goes on to submit that the authority investigated into the matter as to the date of receipt of the letter and came to a finding that the petitioner had deliberately delayed receipt of personal-hearing-intimation by speed post with an object to delay the process of adjudication and in view of the fact that they had exhausted the three adjournments permissible under Section 33A of the Act, 1944 and the deliberate attempt for delaying the process of adjudication, the application dated 16.7.2010 for adjournment was rejected and the matter was disposed of holding the date of hearing as 12.7.2010.

4. Learned counsel for the petitioners *inter alia*, submits that the impugned order itself is *ex facie* erroneous insofar as scope of Section 33A of the Act, 1944 is concerned which is as follows:

> "33A. Adjudication procedure.-(1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.
>
> (2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recoded in writing:
>
> Provided that no such adjournment shall be granted more than three times to a party during the proceeding."

5. In the given facts situation of the present case, there had never been three adjournments granted to the petitioner as claimed in the impugned order. The original date fixed was 11.5.2010 to 14.5.2010. Although the petitioner had sought for an adjournment, the matter could not be taken up on account of the transfer of the adjudicating authority. That adjournment could not be treated as the first adjournment at the behest of the petitioner. Thereafter, the matter has been fixed by the adjudicating authority for the first time on 21.6.2010 fixing the hearing on 29.6.2010. On 25.6.2010, the petitioner sought for an adjournment. At best, this could have been treated as the first adjournment sought for by the petitioner in course of the proceeding and the next date was fixed on 12.7.2010. Admittedly, though it is claimed that the oral intimation had been issued to the petitioner in course of hearing of some other case, admittedly, the official notice communicating the date of hearing to 12.7.2010 was sent under cover of letter dated 2.7.2010 and such letter was served on the petitioner after the date of hearing only on 14.7.2010 i.e. two days after the date of hearing. Therefore, since the statutory

notice of hearing itself was served on the petitioner only after the date of hearing, no effective hearing could have taken place on the said date.

6. In the light of the aforesaid discussion, it is clear that Section 33A of the Act, 1944 and particularly the proviso to sub-Section(2) does not come into operation. Clearly, the petitioner had been denied his right under law to make his defence prior to the adjudication of the proceeding. We have no hesitation in coming to hold that rules of the natural justice have not been complied with and Section 33A (2) proviso of the Act, 1944 has been brought into play, without the necessary circumstances available in the present case to reach the said conclusion.

7. In view of the above reasons cited hereinabove, we quash the impugned order dated 27.08.2010 issued on 31.08.2010 under Annexure-15. The Commissioner (Opposite Party No.2) is directed to issue a fresh notice to the petitioner to proceed in the matter afresh and adjudicate the same expeditiously.

8. Mrs. Padhi, learned counsel representing the Central Excise Department makes a prayer to direct the petitioner to make some further deposit in the matter.

9. Mr. Pangari, learned Senior Counsel for the petitioner, on the other hand, submits that the petitioner had deposited a sum of Rs.1 Crore during the pendency of the proceeding which is referred to in Para-6.1 of the impugned order.

10. In view of such fact, we are of the considered view that since the petitioners had already deposited a sum of Rs.1 Crore, no further deposit needs to be made and the ends of justice would be best served if the direction hereinabove is complied with at the earliest.

11. With the aforesaid observation and direction, the writ application is disposed of. The petitioners are at liberty to move the Commissioner (Opposite Party No.2) seeking necessary documents which they may require for the purpose of making the show-cause reply but, the petitioner is directed to cooperate with the department and not cause unnecessary delay in the process of fresh adjudication in the matter.

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I.Mahanty, J.

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B.N.Mahapatra, J.

ORISSA HIGH COURT; CUTTACK
30th March, 2015/ RKS.