SUPREME COURT OF INDIA
Bench: Justices Pamidighantam Sri Narasimha and Aravind Kumar
Date of Decision: 25th April 2024

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOs. of 2024
(@ SPECIAL LEAVE PETITION (CIVIL) NOs. 371-372 OF 2019)

M/S MADURA COATS PRIVATE LIMITED …APPELLANT(S)

VERSUS

THE COMMISSIONER OF CENTRAL EXCISE AND ANR.
…RESPONDENT(S)

Legislation:
Section 35C(2) of the Central Excise Act, 1944

Subject: Appeals against the order of the High Court, Madras, which set aside the CESTAT order and remanded the matter back for hearing on merits regarding the non-payment of duty allegations.

Headnotes:

Excise Duty Adjudication – Civil Appeal on Tribunal's Remand Order – Civil Appeal against the High Court order which set aside the tribunal's decision and remanded the matter for fresh hearing – Supreme Court addresses compliance with tribunal's directives on providing specific documents to the appellant and subsequent adjudications, highlighting the need for adherence to principles of natural justice in excise duty adjudications. [Paras 1-15]

Excise Duty Documentation – Requirement and Compliance – Held, documents referred to in show cause notices need not be construed as relied upon unless explicitly stated by the authority, not causing substantial prejudice to the appellant. Emphasis on the importance of providing essential documents for a fair hearing while observing the principles of natural justice. [Paras 9, 11-13, 19-20]

Decision – Disposition of Civil Appeals – The appeals are disposed of, affirming the High Court's remand to the tribunal for fresh adjudication, with specific directions to ensure compliance with procedural fairness. The appellant is allowed to demonstrate any prejudice caused by non-furnishing of the said documents, keeping contentions of both parties open. No order as to costs. [Paras 14-15]

Referred Cases: None.

J U D G E M E N T

Aravind Kumar, J.

1. Leave granted.

2. Being aggrieved by the order dated 18.07.2018 passed by the High Court, Madras whereunder the order of the Customs, Excise and Service Tax Appellate Tribunal (hereafter referred to as 'CESTAT') dated 05.05.2009 came to be set aside and remanded the matter back to the tribunal for disposal of the appeals came to be passed by directing the appeals be heard on merits these appeals have been filed.

3. Short facts shorn of explicit details are as under:

4. The appellant is engaged in the manufacture of cotton yarn, polyester yarn etc. and based on an information received that it had indulged in clearance of certain goods manufactured by it without payment of duty resulted in the preventive unit of the respondent visiting the unit and conducting stock challenge of the finished fabrics stocked in the bonded warehouse. Based on a prima facie and reasonable belief that excess quantities of stock were stored for illicit removal, the department seized the excess stock under mahazar and it was provisionally released on execution of general bond; it also resulted in the issuance of two show cause notices (for short SCN's) dated 11.05.2001 and 02.11.2001 which resulted in two orders being passed on 28.02.2006 by the respondent herein. Being aggrieved by the same appeals came to be filed before CESTAT whereunder the tribunal vide order dated 06.09.2006 set aside the orders in original dated 28.02.2006, with a direction to the respondent to provide a copy of the letter dated 20.01.2001 referred to in the SCN's to the appellant and to decide the matter afresh.

5. In the teeth of direction issued by the tribunal, first respondent adjudicated the show cause notices afresh and by separate orders dated 21.11.2008 and 27.11.2008 raised the demand for payment of duty as indicated in the respective orders which resulted in both the orders being challenged by filing two appeals before CESTAT and vide order dated 05.05.2009 in order No. 550 and 551 of 2009 tribunal allowed the appeals and set aside the aforesaid orders of the respondent and yet again directed the respondent herein to pass fresh orders after providing the copy of the letter dated 20.01.2001.

6. Thereafter, the respondent herein filed an application under section 35C (2) of the Central Excise Act, 1944 (hereinafter referred to as 'CE Act' for short) for rectification of the order dated 05.05.2009 contending inter alia that letter dated 20.01.2001 which was ordered to be furnished by the department was not available and sought permission to adjudicate the SCN's afresh without supplying or taking into account the said communication dated 20.01.2001. The said application came to be dismissed as withdrawn with liberty to take appropriate steps vide order dated: 04.01.2010. In the light of the said liberty granted, the respondent herein filed two miscellaneous petitions before CESTAT for modification of the order No.550 and 551 of 2009 dated 05.05.2009 resulting in modification of the order dated 05.05.2009 whereby the respondent was directed to adjudicate the show cause notices without relying upon the letter dated 20.01.2001. Being aggrieved by the same, the appellant herein filed two appeals before the High Court in CMA No.469 and 470 of 2010 resulting in the order of the tribunal being set aside and remanding the matter back for hearing the appeal afresh. Hence, these appeals.

7. We have heard the arguments of Shri Shekhar Naphade, learned Senior Counsel appearing for the appellant and Shri V.C. Bharathi, learned Counsel appearing on behalf of Mr. N. Venkatraman, Additional Solicitor General, for respondent. It is the thrust of the arguments of Shri Shekhar Naphade, learned Senior Counsel that final order No.838 to 840 of 2006 dated 06.09.2006 passed by the tribunal having attained finality whereunder the respondent was directed to furnish the copy of the letter dated 20.01.2001 and the annexures appended thereto and due to non-compliance thereof the High Court ought to have allowed the appeal in its entirety and it could not have remanded the matter back to the tribunal for adjudication of SCN's afresh. He would elaborate his submissions by contending that order dated 06.09.2006 passed by the tribunal by remanding the matter to the adjudicating authority with specific direction being final and binding on the department, said order could not have been modified by the tribunal that too based on an application for modification vide order dated 08.03.2010. He would also contend that High Court erred in not appreciating the fact that in the absence of document containing detailed explanation the adjudicating authority cannot appreciate and adjudicate the SCN's and the order of remand to the tribunal is erroneous and High Court at the most could have remanded the matter to the adjudicating authority, if at all it was warranted and not to the tribunal. Hence, on these grounds, he seeks for setting aside the order of the High Court and allowing the appeals.

8. Shri V.C. Bharathi, learned counsel appearing for the respondent would support the impugned order and by reiterating the contentions urged in the counter affidavit and prays for dismissal of the appeal. He would also contend that the appellant has been successfully dodging the adjudication process on one pretext or the other and the so-called letter dated 20.01.2001 which had been directed by the CESTAT by Order dated 06.09.2006 to be

furnished to the appellant is the letter of the appellant itself, which undisputedly was an explanation offered by the appellant with reference to alleged shortfall and excess storage of fabrics. He would also contend that mere reference to a document in the show cause notice itself need not be construed as if reliance having been placed by the authority on the said document so as to draw inference against the appellant, unless the show cause notice says so. He would further contend that until and unless appellant is able to establish prejudice on account of non-furnishing of the document and it would not be in a position to reply to the show cause notice, such plea of non-furnishing of the document ought not to be entertained. Hence, he would support the impugned order and prays for dismissal of the appeals.

9. Having heard the learned counsel appearing for the parties and on perusal of the impugned order, it would emerge there from that undisputedly at the first instance when the respondent adjudicated the show cause notices dated 11.05.2001 and 20.01.2001 it had resulted in an order dated 28.02.2006 being passed which landed by way of two appeals in final order No.838 to 840 of 2006 before CESTAT and tribunal by order dated 06.09.2006 had observed to the following effect:

> "**4.** It has been asserted by the company's representative that they want to rely upon all documents not relied upon in the SCNs, for the purpose of contesting the allegations contained in the notices. Admittedly, these documents were received by them by 30.12.2005. The cases were posted for personal hearing to 25th January, 2006. On that day, the company's representative appeared before the Commissioner and requested for some more time for perusal of the documents. A renewed request was made for a copy of the aforesaid letter dated 20.01.2001 also. However, it appears, no more opportunity was given to the party and learned Commissioner chose to pass the impugned orders on 28.02.2006. We have found an element of denial of natural justice in these proceedings of the Commissioner. Learned Commissioner ought to have given a reasonable time to the party to peruse the voluminous records for the purpose of preparing replies to the SCNs. He appears to have passed the impugned orders in haste.

5. In the result, we set aside the impugned orders and allow these appeals by way of remand, directing learned Commissioner to (a) supply a copy of the aforesaid letter dated 20.01.2001 (and enclosures thereof) to the appellants (b) allow them a period of four weeks thereafter for perusal of all records (c) allow them a reasonable opportunity of being personally heard (which shall not be less than 7 days from the date of filing of replies to the SCNs and (d) pass speaking orders in accordance with law within 8 weeks from the date of personal hearing. As the party has undertaken to co-operate with the proceedings of the Commissioner, they are mandated to appear before the
Commission for being heard on the date appointed by him."

10. A perusal of the above direction issued by the tribunal would indicate that respondent was directed to supply the copy of the letter dated 20.01.2001 (and enclosures thereof) to the appellant and pass orders after affording reasonable opportunity of the personal hearing.

11. In the teeth of the above direction the respondent herein has passed an order afresh on 21.11.2008 and 27.11.2008 adjudicating the two show cause notices issued earlier. The fact remains that copy of the letter dated 20.01.2001 along with enclosures were not furnished pursuant to the aforesaid directions issued by the tribunal by the adjudicating authority. In fact, request for furnishing the same came to be reiterated by the appellant in the de novo proceedings adjudications of 2 SCN's and it has been observed by the adjudicating authority itself vide paragraph 19 of the order dated 21.11.2008 and paragraph 9 of the order dated 27.11.2008 respectively to the following effect:

"**19.** At the time of personal hearing held on 21.04.2008 before the undersigned, Shri M. Ramasubramanian, Manager (Excise) appeared. He requested that MCL either be supplied with a copy of the document (letter dated 20.01.2001 with enclosures) as directed by CESTAT or be informed of the non-availability of the same so as to file rely. In this connection, he also gave a written representation. A communication was sent to them on 14.07.2008 informing that, MCL projected before the CESTAT as if a copy of the said letter dated 20.01.2001 was not made available to them; whereas, vide their letter dated 22.06.2002, MCL fairly admitted receipt of copies of all documents relied on in the notice; even if they had misplaced their copy as stated before CESTAT copies of the said letter with enclosures should have been available with MCL; and therefore they may file reply to the notice. The communication also mentioned the dates on which MCL was free to appear for hearing. At the time of

hearing held on 16.09.2008, Shri S.S. Thakkur, Vice President (Excise & Legal) appeared along with Shri M. Ramasubramanian, Manager (Excise). They filed reply with reconciliation statements. It was argued that there was no evidence to prove clandestine removal and hence demand made in the notice would not survive. They accordingly, requested for dropping the proceedings."

"**9.** At the time of personal hearing held on 21.04.2008 before the undersigned, Shri. M. Ramasubramanian, Manager (Excise) appeared. He requested that MCL either be supplied with a copy of the document (letter dated 20.01.2001 with enclosures) as directed by CESTAT or be informed of the non-availability of the same so as to file reply. In this connection, he also gave a written representation. A communication was sent to them on 14.07.2008 informing that, MCL projected before the CESTAT as if a copy of the said letter was not made available to them; whereas, vide their letter dated 22.06.2002, MCL fairly admitted receipt of copies of all the documents relied on in the notice; even if they misplaced their copy as stated before CESTAT, copies of the said letter with enclosures should have been available with MCL; and therefore they may file reply to the notice. The communication also mentioned the dates on which MCL was free to appear for hearing. At the time of hearing held on 16.09.2008, Shri. S.S. Thakur, Vice-President (Excise & Legal) appeared along with Shri. M Ramasubramanian, Manager (Excise). They filed reply with reconciliation statements. It was orally argued that since there was no evidence for clandestine removal, the proceedings should be dropped."

12. The direction issued by the tribunal undisputedly has got merged with order dated 27.11.2008 it would be apt and appropriate to note at this juncture itself the contention raised by Shri Shekhar Naphade, learned Senior Counsel which is to the effect that by virtue of the direction issued by the tribunal under its order dated 06.09.2006 having attained finality, the authorities subordinate to the CESTAT having failed to comply with the directions so issued should have resulted in automatic allowing of the appeals by the High Court, though at first blush looks attractive, same cannot be accepted for reasons more than one. ***Firstly***, the direction so issued by the tribunal on 06.09.2006 included a direction to the respondent to pass orders afresh which had resulted in respondent passing the orders on 21.11.2008 and 27.11.2008 respectively. ***Secondly***, the High Court under the impugned order has itself observed that letter dated 20.01.2001 has not been relied upon by the revenue as an adverse document against the

assessee while adjudicating the SCN's. The observation made by the High Court is to the following effect:

"14. At this juncture, we would like to point out that the said letter, dated 20.01.2001 is not relied on by the Revenue as an adverse document against the assessee. On the other hand, it is the document of the assessee themselves, that too, an explanation given by them to the short fall and excess of the fabrics. Only when a document relied on adversely against the assessee, if not supplied to the assessee before passing the order of adjudication, such non furnishing may be construed as an act in violation of principles of natural justice. In this case it is not so."

Thirdly, it has been the consistent stand of the respondent-department that the said letter was in fact supplied to the assessee's representative and the same has been discussed in threadbare by the High Court under the impugned order which is to the following effect:

"15. Even otherwise, as pointed by the learned senior panel counsel for the second respondent, it is evident that the said letter was in fact supplied to the assessee's representative on 26.02.2002, in view of the acknowledgment made by one R. Manoharan stating that he received Xerox copies of all relied upon documents (except S.No. 15), mentioned in the show cause notice no. 20 of 2001 and 30 of 2001 from the superintending of Central Excise, HBQ, Madurai. Thus it is contended by the Revenue that the copy of the letter dated 20.01.2001 was already furnished to the assessee and therefore principles of natural justice was not violated. We find force in the said submission not only based on such acknowledgement on 26.02.2002 and also in view of the assessee's own communication, dated 19.08.2004 addressed to the Commissioner of Central Excise, Tirunelveli, requesting him to once again provide copies of four documents, out of which, one is the said letter, dated 20.01.2001.

The said letter reads as follows:-
The Commissioner of Central Excise,
Central Excise Revenue Building
NGO "A" Colony,
Tirunelveli-627 007
Sir,

Sub: Show Cause Notice No.20 of 2001, dated 2.11.2001 and No.30 of 2001, dated 11.5.2001.

This refers to our letter dated 5th July 2004 and your office response letter dated 8th July 2004 on the above subject.

We humbly submit that we are in the process of preparing reply to the above show cause notices. We once again bring to your kind notice that in view of closure of our unit Madura Fabrics Division in early 2002 to which the above show cause notices were issued and due to non-availability of Personnel who handled excise records during the relevant period, we are even unable to trace out certain documents/statements which were relied upon in the show cause notices and said to have been received by us. We therefore, request you to place once again provide us copies of the following documents and statements given by out personnel for our perusal and then prepare proper reply to the above show cause notice.

Documents and Statements.

1. Chemical Examiner letters issued from File No.LCx.52/S/636/200-01, dated 7.3.2001 and 10.4.2001.
2. Statement dated 30.4.2001 given by Sri R. Murali Narayanan, Information Technology Manager.
3. A file containing letter dated 20.1.2001 along with the enclosures-64 sheets.
4. Statement dated 20.4.2001 given by Mr. R. Nallasivan, Sales Executive-5 sheets.

We submit that it is not out intention to unnecessarily defer submission of reply to the show cause notice but we are handicapped in tracing out the relevant records, invoices, stock registers etc., including documents which were relied upon in the show cause notice, due to non-availability of concerned personnel. We therefore humbly request you to please provide us time upto October 2004 to trace out all the relevant documents, study and prepare proper reply to the show-cause notice. We extremely sorry for the inconvenience caused.

Thanking you,

Yours faithfully,
For MADURAI COATS PRIVATE LIMITED.
(emphasis supplied)"

13. In fact, the High Court has opined and rightly so that the said letter dated 20.01.2001 (with enclosures) which is claimed by the appellant has not having been furnished is only a ruse for not replying to the show cause notice**s** and it would in no way prejudice the appellant's claim, particularly in the background of reliance not having been placed by the respondentauthority for adjudicating the SCN's and in the absence of

prejudice having been caused to the appellant no fault can be laid at the doors of the respondent. It would be of benefit to note that observations made by the High Court in this regard and same is to the following effect:

> "19. Admittedly, the said letter, dated 20.01.2001 is not available with the Revenue. It is claimed by the assessee that copy of the said letter is also not available with the assessee. We have already pointed out that the said letter with enclosures had emanated only from the assessee and therefore, it is their own document. We have also pointed out that the said letter is nothing but an explanation regarding the alleged short fall and excess of the fabrics. Therefore, it was for the assessee to give a suitable reply to the show cause notices, as the contents of the said letter was already discussed by the Commissioner in the show cause notices itself. Therefore, the assessee is not entitled to contend as if they were not in a position to furnish reply to the show cause notice without furnishing a copy of the said letter, dated 20.01.2001. Referring a document in the show cause notice itself need not be construed as though a reliance is also placed by such authority on such document to take an adverse inference against the assessee, unless the show cause notice itself explicitly expresses so. Referring a document in a show cause notice does not mean relying upon the same as well, unless such reliance against the assessee is apparently evident on the face of such notice.
>
> 20. Even otherwise, the assessee must show and establish that such non-furnishing of a particular document caused them prejudice and that they are prevented from giving an effective reply to the show cause notice. Certainly, a document which was either not within the knowledge of the assessee or not emanated from them, if relied on in the show cause notice, that too, by taking adverse inference against the assessee based on such document, then non-furnishing of such document would certainly result in causing prejudice to the assessee. On the other hand, if such document itself has emanated from the assessee and not from any third party or the Revenue and if the same was also not considered to draw any adverse inference against the assessee to form a prima facie opinion in the show cause notice, non-furnishing of such document to the assessee itself would not be construed as causing prejudice to the assessee. It is not beyond one's reasonable expectation that an assessee who sent a communication to the Revenue, would certainly retain a copy of the same in their file, especially when the proceedings are going on and not get terminated. If they did not retain a copy of such document or if it is lost from their hand, the assessee has to blame themselves. In this Scenario, the question of prejudice does not arise. At the best, it could be treated as prejudice caused by self-default or predetermination and not a prejudice caused at the instance of the Revenue."

14. Though, we are in complete agreement with the contention raised by Shri Shekhar Naphade that order of review or modification which came to be

passed on 08.03.2010 is without sanctity of law deserves to be accepted in the light of the findings recorded at paragraph 25 to 29 of the impugned order and we affirm the same, yet for the reason that matter has now been remanded back to the tribunal for adjudicating the SCN's afresh dissuade us from setting aside the impugned order.

15. The High Court has also rightly not remitted the matter to the adjudicating authority for considering the matter afresh and the findings of the High Court recorded under the impugned order in paragraph 19 and 20 referred to supra having been affirmed by us herein above, yet we deem it appropriate to reserve the liberty to the appellant to urge all contentions before the tribunal including the one urged before this Court namely to demonstrate as to how prejudice has been caused to the appellant by nonfurnishing of the said letter dated 20.01.2001 (with enclosures) and contentions of both parties are kept open and the order of remand made to the tribunal by the High Court under the impugned order would stand affirmed subject to the above observations. Accordingly, the appeals stand disposed of with no order as to costs.