

GIB/TN/INDRIYA CONSTRUCTION /20.11.2020/HC-238

High Court Category : PRINCIPLES OF NATURAL JUSTICE

State : Tamil Nadu

Order No.: GIB/TN/INDRIYA CONSTRUCTION /20.11.2020/HC-238

Name of Entry :
INDRIYA CONSTRUCTION COMPANY

Date : 20-11-2020

Breif Issue :

FACTS AND ISSUE OF THE CASE:

In this case the writ petition was filed by the petitioner-Assessee on the ground that there was non-compliance on the part of the Adjudicating Authority with the Board's Instruction No.1053/2/2017-CX dated 10.03.2017, paragraph 5.0 which provided for pre-consultation before issuance of Show Cause Notice where the demand against the Assessee is likely to be above Rs.50.00 Lakhs (except for preventive/offence related SCN's).

The Assessee in the present case, by invoking the writ jurisdiction of this Court, has defeated the very purpose of issuance of Show Cause Notice and has successfully delayed the same for about one year now and even though a post-Show Cause Notice opportunity in terms of the said Circular para 5 was given to the Assessee by the agreement of both the counsel by the learned Single Judge by the order dated 16.12.2019, still the Assessee is not satisfied despite an order passed on 09.01.2020 by the Adjudicating Authority, after giving an opportunity and pre-consultation meeting held with the Assessee. She therefore submitted that the Assessee should now be called upon to file his objections to the Show Cause Notice itself and let the adjudication proceedings take place.

Since reasons for reassessment have to be recorded by the Assessing Authority under Section 148 of the Income Tax Act and objections thereto, if any filed by the Assessee, have to be decided by the Assessing Authority, before the reassessment proceedings in pursuance of Notice under Section 148 of the Income Tax Act are taken, paragraph 5 of the Board's Circular in the present case is something akin to that and if the Adjudicating Authority comes to the conclusion, like it has done in the present case, that Show Cause Notice is proper and justified and the Assessee should now show cause before the Adjudicating Authority by raising his objections by filing reply thereto, the Adjudicating Authority should be permitted and allowed to undertake the adjudication proceedings now and the Assessee has further remedial measures by way of further appeal under the statute itself, if he still feels aggrieved against the adjudication order. Therefore, she submitted that the present Writ Appeal is misconceived and deserves to be dismissed.

Decision of Advance Ruling Authority :**DECISION:**

The Show Cause Notice itself is a procedure known to the Excise Law and other Tax Laws where the Assessee is called upon to show cause against the issues raised in the Show Cause Notice in terms of principles of natural justice or *Audi Alteram Partem* and the Assessee is expected to raise his objections and points in the form of reply to the Show Cause Notice before the Assessing Authority. Then, the Adjudicating Authority or the Assessing Authority is expected to decide those issues and objections and pass appropriate Adjudication Order. If the Assessee feels aggrieved by the same, further two appellate forums are available under the law, namely first appeal before the Commissioner (Appeals) and second appeal before the Tribunal. Even thereafter, on the questions of law, the Assessee has a remedy before the High Court and further appeal to the Supreme Court. Therefore, such a series of hierarchical alternative remedial procedures and measures are already envisaged and provided for in the Central Excise Act and similar provisions are available in almost all the taxing statutes.

The pre-consultation procedure provided by the Board in its Circular dated 10.03.2017, even though there is no such statutory requirement or provision in the Central Excise Act itself, perhaps was issued with a pious objective of cutting short the controversy before the Show Cause Notice stage itself, is and has been abused by the Assesseees in the manner like the present case being illustrative one of that.

The Assessee, fully being aware that the Constitutional Courts may not find easy time to dispose of such matters quickly, the proceedings in pursuance of such Show Cause Notices or even issuance of Show Cause Notices are successfully delayed for years together, defeating the very purpose for which such Show Cause Notices are issued and possible revenue which can be gathered out of Adjudication Orders passed in pursuance of such Show Cause Notices. This other side of the coin was perhaps not envisaged by the Board when it laid down guidelines - Therefore, the Board should re-look into this aspect of the matter.

The learned Single Judge was more than benevolent in granting this opportunity to the Assessee in terms of the Board's Circular even post facto Show Cause Notice and allow him an opportunity to raise his preliminary objections before the Adjudicating Authority who is supposed to decide the objections and either sustain the said Show Cause Notice or curtail or set aside the same. Once the order thereon was passed, we are of the opinion, as rightly pointed out by the learned counsel for the Revenue, that it is something like upholding the issuance of re-assessment notice under Section 148 of the Income Tax Act and under the Excise Law to justify the issuance of Show Cause Notice itself - Nothing more can be done in such cases by the writ Court and therefore, we feel that the Assessee ought to have approached the concerned Assessing Authority by raising his objections on the merits of the case, so that the proceedings under the Act could have proceeded further.

The appeal cannot be entertained and is dismissed.