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UNION OF INDIA AND ANR.

v.

M/S. G.T.C. INDUSTRIES LTD., BOMBAY

MARCH 27, 2003

B

[SYED SHAH MOHAMMED QUADRI AND ASHOK BHAN, JJ.]

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Central Excise Act, 1944—Section 14—Evasion of excise duty—Notice—Oral submission by co-noticee before authority—Opportunity to rebut the same not given to noticee-company—Adverse order against the noticee-Company relying on the oral submission of co-noticee—Order of the authority quashed by High Court holding the reliance on the submission as wrong—On appeal plea that reliance on submission was not placed by authority and even if placed same may be ignored as other material sufficient to come to the conclusion—Held, reliance on the submission factually proved—Order of authority cannot be sustained ignoring the submission—Adverse finding could not have been recorded against noticee-Company relying on the oral submission without any supporting material and without opportunity to the Company to meet the same.

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Practice and Procedure:

Quasi Judicial Order—Review of—Held, has to be judged on the basis of judgment contained therein and not on the basis of pleas in the counter affidavit or oral arguments.

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Show cause notices were issued to the respondent-company, its front company and its partners among others for having evaded payment of excise duty. One of the partners appeared before the Collector of Central Excise in absence of the representatives of the respondent-company and made oral submissions. Respondent-company requested to issue summons under Section 14 of Central Excise Act, 1944 to partners in order to cross examine them. The Collector refused to issue summons. The ruling of the Collector declining to issue summons was challenged by a writ petition on the ground of violation of principles of Natural Justice. High Court initially stayed all the proceedings in pursuance to the show cause notice by its interim order, but later vacated the same. Hence the matter was taken to this Court by way of Special Leave Petition wherein the Court

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had directed the Collector to pass the final order and place the same before High Court. The Collector as per the direction of this Court passed the final order relying on the statement of the partner and forwarded the order to the High Court. High Court quashed the order of the Collector on the grounds that denial of opportunity to cross examine the partners amounted to breach of principles of Natural Justice; and that Collector had erred in placing reliance on the submissions of the partners. The matter was remanded to the Collector with a direction to summon the partners.

In appeal to this Court appellant-State contended that the Collector in coming to the finding did not rely on the statement of the partner; and that order of the Collector should be sustained by ignoring the statement of the partner as there was other sufficient material on record to sustain and justify the said order.

Respondent-company contended that the order of the Collector was based on the statement made by the partner before the authorities; and that the partner could not be relied on for recording an adverse order against the respondent-company.

Disposing of the appeals, the Court

HELD: 1. Collector passed his order in original quoting extensively from the statement made before him by the partner makes it clear that the Collector had placed strong reliance on his statement. It is specifically recorded in the order that the departmental representatives who appeared before the Collector had also placed strong reliance on his statement. The Collector's order is based largely and substantially if not entirely on his statement. High Court in its judgment has also recorded a finding that the Collector in its order had substantially relied upon his statement.

[54-G, H; 55-A]

2. It cannot be said that the order of the Collector should be sustained by ignoring the statement of the partner as there was other sufficient material on record to sustain and justify the said order. It may not be possible to separate or disentangle his statement from other material evidence on record. A quasi-judicial order has to be judged on the basis of reasoning contained therein and not on the basis of pleas put forward by the person seeking to sustain the order in its counter affidavit or oral arguments before the court. [55-D, E]

3. No statement was made by the partner before the adjudicating

A authority. What is referred to as his statement is nothing but his oral submissions made at the hearing. An adverse finding could not have been recorded against the respondent-Company by relying upon the oral submissions made by a co-noticee at the hearing without any supporting material on record, providing due opportunity to respondent-Company to meet the same. [55-F, G]

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4. Directions issued by the High Court to the Collector to summon the partners for necessary examination and to afford an opportunity to the respondent-Company to cross-examine them are set aside. But the order of High Court setting aside the order of the Collector is sustained on the ground that the Collector had erred in placing reliance on the statement of the partner. The direction issued by High Court that the proceedings shall be taken by the officer other than the one who had made the adjudication order shall also stand set aside. Otherwise also this direction has become infructuous with the passage of time. The incumbent Collector is directed to decide the matter afresh on the basis of any other material obtained and also placed on record for the purpose duly granting reasonable opportunity to respondent-Company to produce evidence in rebuttal. [55-H; 56-A, B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7531 of 1995.

E From the Judgment and Order dated 20.10.1990 of the Gauhati High Court at Assam in C.R. No. 1940 of 1989.

WITH

C.A. No. 7815 of 1995.

F Jaideep Gupta, N.K. Bajpai, K.K. Dhawan and B.K. Prasad for the Appellant.

S. Ganesh, Mrs. Rohina Nath, Mrs. Nisha Bagchi, U.K. Khaitan for Khaitan & Co., J.D. Jain (NP) and Mrs. Hemantika Wahi for the Respondent.

The Judgment of the Court was delivered by

G **BHAN, J.** Civil Appeal No. 7531 of 1995

Union of India has filed this appeal against the order of the Gauhati High Court in Civil Rule No. 1940 of 1989 wherein the High Court at the instance of respondent No.1 has quashed the order passed by the Collector of Customs and Central Excise, Shillong. (for short 'the Collector') dated

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15th May 1990 and remanded the case to the Collector for a fresh decision with the following directions :

“In view of the above, the adjudication order dated 15.5.90 is set aside. The collector shall resume the proceedings and summon the aforesaid three persons viz. Sri R. Salio, Sri Liangtilinga and Sri Lalchungunga for necessary examination in accordance with the observation made above and thereafter proceed to decide the matter afresh. The other materials obtained and already on record shall be available for the purpose . We also direct that further proceedings shall be taken by an officer other than the one who has made the adjudication order dated 15/ 16 May, 1990 and the competent authority in that regard shall take appropriate action and make necessary orders.”

Facts relevant to the points raised in this appeal are:

GTC Industries Ltd. (respondent in this appeal) is a well known manufacturer of cigarettes having its own brand names one of which is Panama Virgin. GTC Ltd. was having its cigarettes manufactured inter alia, through M/s. North Eastern Tobacco having its own place of work in Mizoram. These cigarettes were being removed from the premises of North Eastern Tobacco (hereinafter referred to 'NET') without payment of Excise Duty and the same was detected when certain vehicles carrying the cigarettes were apprehended by the Excise Authorities.

The Collector issued Show Cause Notices to GTC and NET. Show Cause Notices were also issued to the partners of NET M/s Sailo, Lalchunganga and Liangtilinga, to one Ajay Sukhani who was the power of attorney holder on behalf of NET and also the officers of GTC and its sister concerns with the allegation that NET was set up as a front company by GTC to evade payment of excise duty. Contravention of various provisions of the Act was alleged against GTC as well as its officers.

In the course of hearing before the Collector of Central Excise GTC applied to the Collector requesting that summons be issued under Section 14 of the Central Excise Act, 1944 (hereinafter referred to as the 'Act') to the partners of NET including Shri Sailo so that GTC could cross examine him. The Collector after hearing arguments ruled that he could not issue summons to the said persons inasmuch as they were also co-noticees to the proceedings. They had also been issued show cause notices for contravening the provisions of the Act and therefore could not be compelled to appear for the purpose of cross-examination by another co-noticee. The Collector held:

A “Of the persons who were asked to cross-examination three of them viz. Richard Sailo, Liangtilinga, Lalchungnunga are co-noticees to these proceedings. By issuing them summons as requested by GTC, prejudice is likely to be caused to their defence by compelling their attendance before me. It is an established principle of law that no noticee can be forced to appear before the adjudicator. In fact, I had given the opportunity by letters dated 23rd Oct., 1989 and 17th November, 1989 to M/s GTC to bring these persons as their own witnesses, if they wished to rely on their testimony. But they have not done so. Being unable to issue summons to these persons, I cannot but reject the request of GTC.”

C The ruling of the Collector declining to issue summons was challenged in the High Court by filing the present Writ Petition before the completion of the adjudication proceedings on the ground of violation of Principles of Natural Justice.

D The High Court initially on 4th of December, 1989, as an interim measure, stayed all the proceedings in pursuance to the Show cause notice. Later on, on 24th January, 1990, the stay granted on 4th of December 1989 was vacated by the Division Bench. The matter was further carried to this court by filing SLP 6288/90 which was heard and disposed of on 4th May, 1990 with the following observations:

E “After some arguments, both sides are agreed that the respondent may pass the final order of adjudication. However, the order may not be communicated to the petitioner. It may be put in a sealed cover and placed before the High Court for such directions as the High Court may give at the time of hearing of the writ petition.

F We are told that the writ petition is likely to come up before the High Court for hearing on 17th May, 1990. We hope that the Writ Petition will be disposed of expeditiously.

The SLP is disposed of in these terms.”

G On 15th of May, 1990, the collector passed the final order in the adjudication of the show cause notice and forwarded the same in a sealed cover to the High Court in terms of the order passed by this Court in SLP 6288/90. On 10th of July, 1990 High Court opened the sealed cover and delivered a copy of the order of the Collector to the counsel for GTC and directed that it may be served on the other affected parties as well. The High Court concluded the hearing on 10th August 1990 and the impugned judgment

was pronounced on 20th October, 1990.

Plea raised by the appellant that since the final order passed by the Collector had been communicated to the affected persons as required under the law, the parties should be directed to seek their remedy by way of appeal provided under the Act was rejected by the High Court on the ground that alternate remedy was not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 of the Constitution. In the given facts and circumstances of the case the Court could proceed to examine the correctness or otherwise of an order without asking the aggrieved party to exhaust the alternate remedy of filing of appeal/revision provided under the Act. It was held that GTC had come to the Court before the finalisation of the adjudication by the Collector with the grievance that the proceedings were being conducted in violation of Principles of Natural Justice. Finalisation of the proceedings by the Collector were made subject to the decision of the Writ Petition. As the order of the Collector came into being during the pendency of the writ petition, the same could be examined by the Court and if necessary relief moulded to the requirements of the subsequent developments which had taken place during the pendency of the writ petition.

On merits, the counsel appearing for the GTC before the High Court confined his arguments to the issue of infringement of the violation of Principles of Natural Justice only. The High Court held that denial of opportunity to the GTC to cross-examine Shri Sailo, Lalchunganga and Liangtilinga was nothing short of denial of reasonable opportunity to the Writ Petitioner to defend and establish its version. That the same amounted to the breach of Principles of Natural Justice. On this basis the final adjudication order of Collector was set aside and the matter was remitted back with the direction to resume the proceedings and issue summons to the partners of NET for necessary cross-examination by GTC and thereafter to decide the matter afresh.

Learned Senior Counsel appearing for the Union of India Mr. Jaideep Gupta submitted that no statement was taken from Shri Sailo by the authorities nor did the authorities rely upon any statement of Shri Sailo against GTC. That it was not a case where the evidence had been produced by the appellant in support of its case and no opportunity of cross-examination was given to the other side. Notice could not be issued to Shri Sailo under Section 14 of the Act to compel his attendance and to make a statement coupled with the opportunity to the GTC to cross-examine him. That Shri Sailo being a co-

A noticee, could not be compelled to appear as witness against himself. Non-summoning of a co-noticee for the purpose of cross-examination by another co-noticee did not amount to breach of Principles of Natural Justice. In the alternative, it was submitted that in a case based on violation of Principles of Natural Justice, it is to be shown that some prejudice was caused to the aggrieved person because of the alleged breach of violation of Principles of Natural Justice. It was vehemently contended that the Collector in coming to the finding that the GTC was the real manufacturer and the NET its front company did not rely upon the statement of Shri Sailo. In coming to this finding the Collector had primarily placed reliance on the statements of other persons.

C Per contra, Shri Ganesh who appeared for the respondent fairly conceded that he could not support the direction issued by the High Court to summon Shri Sailo under Section 14 of the Act and produce him for cross-examination by the GTC. But he entered a caveat to the submission of the counsel for the appellant that the Collector had not placed reliance on the statement of Shri Sailo. Relying upon the findings recorded by the High Court, it was contended that the Order of the Collector was based on the statement/submissions made by Shri Sailo before the authorities. That the statement/submissions of Shri Sailo could not be relied upon for recording an adverse order against the GTC.

E Submissions put forth by the counsel appearing for the Union of India cannot be accepted. It is an admitted case before us that Shri Sailo, Lalchunganga or Liangtilingadid not file any response by way of a written reply. Their statements were also not recorded. Shri Sailo appeared before the Collector on 25th November, 1989 in the absence of the representatives of GTC, on which date the collector recorded the submissions of Shri Sailo. At the subsequent hearing which took place on 1st May, 1990, representatives of GTC attended the proceedings but were not given any notice or information about the submissions/statement made by Shri Sailo on 25th November, 1989. Thereafter, on 15th May, 1990, Collector passed his order in original quoting extensively from the submissions/statement made before him by Shri Sailo which ran into three pages which itself makes it clear that the Collector had placed strong reliance on the submissions/statement of Shri Sailo. It is specifically recorded in the order that the departmental representatives who appeared before the Collector had also placed strong reliance on the submissions/statement of Shri Sailo. The Collector's order is based largely and substantially if not entirely on the submissions of Shri

Sailo. The High Court in paragraphs 27 and 28 of its judgment has also recorded a finding that the Collector in its order had substantially relied upon the submissions made by Shri Sailo. In paragraph 27 it is recorded: A

“It may also here be noted that the Collector in his adjudication order, made on 15th May, 1990, has substantially relied upon the statement of Shri Sailo which was made to the Collector at a personal hearing.” B

In paragraph 28, it is observed:

“The utilisation of Shri Sailo’s statement in itself shows that the statement of Mr. Sailo was indeed not only necessary but of substantial importance in the consideration and proper adjudication on the version of the petitioner.” C

Counsel for the appellants failed to displace the finding recorded by the High Court on this point. Contention of the counsel for the Union of India that the order of the Collector should be sustained by ignoring the submissions/ statement of Shri Sailo as there was other sufficient material on record to sustain and justify the said order cannot be accepted. It may not be possible for us to separate or disentangle the submissions of Shri Sailo from other material evidence on record. It is well settled that a quasi-judicial order has to be judged on the basis of reasoning contained therein and not on the basis of pleas put forward by the person seeking to sustain the order in its counter affidavit or oral arguments before the court. D E

It is apt to note here that no statement was made by Shri Sailo before the adjudicating authority. What is referred to as statement of Shri Sailo is nothing but his oral submissions made at the hearing. F

An adverse finding could not have been recorded against the GTC by relying upon the oral submissions made by a co-noticee at the hearing without any supporting material on record, providing due opportunity to GTC to meet the same. G

For the reasons stated above, the appeal is accepted in part and directions issued by the High Court to the Collector to summon Shri Sailo, Liantilinga and Lalchungunga for necessary examination and to afford an opportunity to the GTC to cross-examine them are set aside. But the order of the High Court setting aside the order of the Collector is sustained on the ground that the Collector had erred in placing reliance on the submissions of Shri Sailo. The H

- A direction issued by the High Court that the proceedings shall be taken by the officer other than the one who had made the adjudication order shall also stand set aside. Otherwise also this direction has become infructuous with the passage of time. The incumbent Collector is directed to decide the matter afresh on the basis of any other material obtained and also placed on record for the purpose duly granting reasonable opportunity to GTC to produce evidence in rebuttal.

- The Collector is directed to dispose of the matter within four months from the date of appearance of the parties before it. The parties through their counsel are directed to appear before the Collector of Customs, Shillong on 5th May, 2003. No costs.

Civil Appeal No. 7815 of 1995

- This appeal is directed against the interim order arising in the same proceedings. Since the final matter has been disposed of, this appeal has become infructuous and is disposed of accordingly. No costs.

K.K.T.

Appeals disposed of.