

a

C.A.No. 411 OF 2001
ITEM NO.101 (Part-Heard)

COURT NO.10

SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.411 OF 2001@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCC

LAJYA DYEING & BLEACHING WORKS ... APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. ... RESPONDENT(S)

(with office report)

Date: 02/04/2003. This/These matter(s) were called on for hearing today.@@
AAAAAAAAAA

CORAM:

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s) Mr. V. Lakshmikumaran, Adv.
Mr. A.R. Madhava Rao, Adv.
Mr. Alok Yadav, Adv.
Mr. V. Balachandran, Adv.

For Respondent(s) Mr. Raju Ramachandran, ASG
Mr. Sidharth Chaudhary, Adv.
Mr. B.K. Prasad, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
.SP2

Heard learned counsel for the parties for
one hour.
The appeal stands dismissed in terms of the
signed order. No order as to costs.

.SP1

(K.K. Chawla) (Jasbir Singh) @@
AA
Court Master Court Master

[Signed order is placed on the file]

.PA
.PL58

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.411 OF 2001@@

CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

LAJYA DYEING & BLEACHING WORKS APPELLANT

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

O R D E R@@
CCCCCCCC

.SP2

This appeal is against an order of the Bombay High Court dated 8th February, 2000.

Briefly stated the facts are as follows:-

The appellants are job workers who process fabric on behalf of others. Question arose as to whether or not they were liable to pay excise, and if so, on what basis the value had to be worked out. Show cause notices were issued to them. Large number of Writ Petitions came to be filed. They all culminated in the judgment of this Court in Ujagar Prints v. Union of India, [(1989) 3 SCC@ CCCCCCCCCC CCCCCCCCCC 488]. A clarificatory order was subsequently issued [(1989) 3 SCC 531].

..2/-

-2-

Whilst these matters were pending before this Court, the parties had been directed to pay 50% of the demand and to furnish bank guarantee for the balance 50%. After the culmination of these matters, the Department sought to enforce the bank guarantees. A clarificatory order was passed by the High Court to the effect that the bank guarantees could not be encashed unless the demand was re-assessed on the basis set out in the judgment of this Court.

After the clarificatory order by the High Court, a notice dated 31st March, 1994 was issued to the appellant. This notice referred to the orders of the Supreme Court and the High Court and stated that on the basis of these orders the Department had re-examined the declarations filed and determined the value as per the orders. It was stated that the demand of Rs.1,34,51,185.45 (in accordance with the demand notices issued for the period 1979 to 30th June, 1982) was proposed to be confirmed. This notice then called upon the appellants to show cause.

..3/-

-3-

A hearing took place on 22nd June, 1995.

According to the appellants all that happened at this hearing was that the appellants asked for details of the demand notices which was agreed to be furnished. According to the respondents there was a complete hearing on that date.

On 14th July, 1995, the Assistant Commissioner addressed to the advocate of the appellants a letter which reads as follows:

.....L.....I.....T.....T.....T.....T...J.
.SP1

"This has reference to the personal hearing which you attended before me on 22.6.1995 in the case of M/s. Lajya Dyeing & Bleaching Works during the course of which you had requested for details demand notice issued so that payment procedure could be facilitated.

Total demands pertaining to Bombay-I, were amounting to Rs.1,34,51,185.45 out of which 50% had already been paid by your clients as per Supreme Court's order. The balance dues of Rs.67,25,592.30 (Rs. Sixty Seven Lakhs Twenty Five Thousand Five Hundred and Ninety Two and Paise Thirty Only) are now to be paid.

A separate list of demands issued by Bombay II. Commissioner is also enclosed for your ready reference. From this it will be very clear that the dues being paid by you to Bombay-II Commissioner do not include the due pertaining to this Commissionerate.

You may therefore advise your client M/s. Lajya Dyeing & Bleaching Works to make the balance payment of Rs.67,25,592.30 immediately.

..4/-

-4-

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
.SP2

Along with this letter the particulars of demand were also annexed.

Matters stood like this till the Kar Vivad Samadhan Scheme, 1998 (in short "KVSS") was introduced with effect from 1st September, 1998. The appellants filed a declaration under this Scheme. This was rejected on 19th February, 1999 on the ground that adjudication has already taken place and that the tax arrears in question were not in dispute on the date the declaration was filed.

The appellants then filed Writ Petition No.728 of 1999 in the High Court. In this Writ Petition they claimed that the letter dated 14th July, 1995 was not an adjudication order. They claimed that it was merely a letter informing giving particulars of demand. They, therefore, prayed that their declaration be accepted. They also prayed that the alleged order dated 14th

July, 1995 was passed without following the principles of natural justice and that it should be quashed.

This writ petition has been disposed of by the impugned judgment. A reading of the impugned order shows that the only ground urged before the High Court

..5/-

-5-

was that the rejection of their declaration was wrong. It is clear that the challenge to the validity of the order dated 14th July, 1995 was not pressed before the High Court. Even in the Special Leave Petition, before this Court, no ground is taken regarding the validity of order dated 14th July, 1995.

Thus, the only question before this Court is whether, on 14th July 1995, there is an order of adjudication. We have been taken through the adjudication Manual as well as Section 35 of the Central Excise Act and Rule 213. It has been urged that a reading of the letter dated 14th July, 1995 makes it clear that it is not an order as contemplated under the Act. It is urged that the Department was to re-evaluate as per the guidelines laid down by this Court and that no such re-valuation has taken place. It is urged that the letter dated 14th July, 1995 could not be considered to be an order of adjudication.

Under Section 11A(2) of the Central Excise Act, the officer on consideration of the representation, if any made, must determine the amount of duty due and thereupon the assessee is to pay the amount so

..6/-

-6-

determined. If the amount of duty is determined and the appellants have been called upon to pay that amount then there has been adjudication.

The High Court, in the impugned judgment, has held that the demand made earlier is confirmed and therefore there is an adjudication. We are in agreement with the view expressed by the High Court. The order dated 14th July, 1995 makes it clear that a personal hearing was given on 22nd June, 1995. It sets out what has already been paid. Then it calls upon the appellants to pay the balance amount. Thus, there has been adjudication and there is a demand. It may be that this order is not in the format prescribed. It may also be that principles of natural justice were not followed but those are grounds on which the order could have been challenged. In fact, these grounds were taken in the writ petition. However, those grounds were not pressed. We have, therefore, not looked into these aspects and express no opinion thereon.

The question then arises is whether the appellants are entitled to the benefit of the Kar Vivad Samadhan Scheme. Section 95 of the Scheme makes it

..7/-

-7-

clear that in cases where no appeal or reference or writ petition is admitted or pending before the Appellate Court or the High Court or the Supreme Court and where no application for revision is made before the Central Government, the Scheme is not to apply. In this case, admittedly, on the due date i.e. 31st March, 1998 there was no pending appeal, reference or writ petition or application. Under these circumstances, the declaration was correctly rejected.

We, therefore, do not find any infirmity in the impugned order. The appeal stands dismissed. No order as to costs.

.SP1

.....J.
(S.N. Variava)

.....J.
(Brijesh Kumar)

New Delhi,
April 02, 2003.