

CASE NO.:
Appeal (civil) 5295 of 2006

PETITIONER:
M/s. Siemens Ltd.

... Appellant

RESPONDENT:
State of Maharashtra & Ors.

... Respondents

DATE OF JUDGMENT: 01/12/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 15691 of 2005)

S.B. Sinha, J.

Leave granted.

Whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would interfere with a demand directing payment of cess is in question in this appeal which arises out of a judgment and order dated 8.07.2005 passed by a Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 4338 of 2005.

The appellant is a multi location company. It has a factory and godown at Kalwe. It pays cess for the goods supplied from the said factory in terms of the provisions of the Bombay Provincial Municipal Corporation Act, 1949. It also owns a factory at Aurangabad. Its office is at Kharghar. The said factory at Aurangabad and the office at Kharghar are outside the jurisdiction of the city limits of Navi Mumbai and, thus, outside the territorial jurisdiction of the Bombay Municipal Corporation. Supplies are made to dealers directly from the appellant's factory situated at Aurangabad and office at Kharghar. However, the establishment of the appellant at Kalwe was directed to pay taxes, although according to it, no jurisdictional fact exists therefor.

The demand was made terming the same as a show cause notice. It appears that in course of routine investigation, some vendors had made certain complaints as regards the transactions of goods from the appellant's factory at Kalwa. The appellant made its representation on receipt of the said purported demand. Oral and written submissions were also made on 2.05.2005 and 10.06.2005 stating that the appellant had neither been receiving any goods within the local limits of Respondent No. 2 nor was it an importer in respect of the goods directly sold from its Aurangabad factory or from its sub-vendors' manufacturing premises and, therefore, they were not liable to pay any cess thereupon.

By reason of a purported show cause notice, the appellant was directed to make payment of cess with interest immediately in respect of the purported supplies made to Navi Mumbai parties right from 1.06.1996. It was, however, stated:

"You are also requested to attend at above address at 11.00 a.m. on 4.7.05 hearing. I am enclosing herewith the photocopies of the bills raised by Aurangabad Daman divisions to the Navi Mumbai Vendees."

A writ petition was filed by the appellant herein questioning the said purported notice. By reason of the impugned order, the High Court refused to exercise its jurisdiction under Article 226 of the Constitution of India stating:

"Challenge is to a show cause notice issued by the Corporation demanding certain payment of cess on the value of goods imported from Aurangabad and Daman. Petitioners may file their reply to the show cause notice and produce the relevant documents within two weeks. In case the order is adverse to the petitioner no recovery shall be made for a period of four weeks from the date of service of the order on the petitioner."

Before this Court a counter affidavit has been filed wherein although inter alia it was contended that the said show cause notice cannot be termed as an order determining the rights and obligations of the parties, it has clearly been stated:

"I say that the show cause notice dated 22.6.2005 at Annexure P-2 to the Special Leave Petition indicates that the Respondent No. 2 Corporation has been deprived of lawful recovery of Cess on the said goods imported within the jurisdiction of the Respondent Corporation. I say that such evasion of Cess is in huge amounts and it is perfectly within the rights of the respondent Corporation to call upon all the parties involved in the transactions to arrive at the exact finding of fact. I say that for arriving at the finding of fact with regard to the said imports there are many facts which need to be taken into account. I say that such factual aspects include : which is the party which has imported the goods within the jurisdictional limits of the respondent Corporation what is the nature of contract between the seller and the said importer of goods, is there any mechanism used by the parties to avoid payment of Cess on the said import of goods, what is the extent of Cess that is evaded as a result of such mechanism and who ultimately can be held responsible both for the purposes of recovery as also for the purpose of penalty\005"

It was further asserted:

"\005I say that it is well known that under the Bombay Provincial Municipal Corporation (Cess on Entry of Goods) Rules 1996 goods purchased from registered dealers are not subject to Cess. I say that in this view of the fact the entire nature of the transactions, to which the petitioner also was party, need to be examined and scrutinized from the perspective of recovery of cess and identification of liability. I say that if the petitioner has directly or indirectly supplied the goods the petitioner itself must come forward to cooperate with the respondent Corporation to enable it to discharge its duties prescribed under the B.P.M.C. (Cess on Entry of Goods) Rules, 1996 read with B.P.M.C. Act 1949\005"

The question as to whether jurisdictional fact existed for issuance of the said notice order passed by the respondent was in question in the said writ petition.

Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

The said principle has been followed by this Court in V.C. Banaras Hindu University and Ors. v. Shrikant [2006 (6) SCALE 66], stating:

"The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

In K.I. Shephard & Ors. etc. etc. v. Union of India & Ors. [AIR 1988 SC 686], this Court held :

"\005It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

[See also Shri Shekhar Ghosh v. Union of India & Anr. 2006 (11) SCALE 363 and Rajesh Kumar & Ors. v. D.C.I.T. & Ors. 2006 (11) SCALE 409]

A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed and the matter is remitted to the High Court for its consideration afresh on its own merits. No costs.