

GAHC010093352022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3210/2022

CENTURY PLYBOARDS (INDIA) LTD AND ANR.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE AT CENTURY
HOUSE, P-15/1, TARATALA ROAD, KOLKATA-700088

2: SANJAY AGARWAL
MANAGING DIRECTOR OF THE PETITIONER COMPANY
RESIDENT OF 4A
ASHOKA ROAD
KOLKATA
PIN-70002

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP. BY THE SECRETARY, TO THE GOVT. OF INDIA, MINISTRY OF
COMMERCE AND INDUSTRY, DEPARTMENT OF COMMERCE, NORTH
BLOCK, NEW DELHI-110001

2:PRINCIPAL ADDITIONAL DIRECTOR GENERAL
DIRECTORATE OF REVENUE INTELLIGENCE GUWAHATI ZONAL UNIT
MAINAAK TOWERS
GROUND FLOOR
CHRISTIAN BASTI
G.S ROAD
GUWAHATI

3:THE ASSISTANT DIRECTOR
DIRECTORATE OF REVENUE INTELLIGENCE
MINISTRY OF FINANCE
GUWAHATI

4:SENIOR INTELLIGENCE OFFICER
DIRECTORATE OF REVENUE INTELLIGENCE MAINAAK TOWERS

GROUND FLOOR
CHRISTIAN BASTI
G.S ROAD
GUWAHAT

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 18-05-2022

Heard Dr. A Saraf, learned senior counsel for the petitioner, Mr. SC Keyal, learned counsel for the respondents No. 2, 3 and 4 being the authorities in the Directorate of Revenue Intelligence and Ms. A Gayan, learned counsel for the respondent No. 1 being the Union of India through the Ministry of Commerce and Industry, Department of Commerce.

2. Without going into the details of the background facts leading to this writ petition, we take note of that in furtherance of an enquiry in connection with import of EPCG Licenses by the petitioner Star Cement Meghalaya Limited, a summon dated 27.04.2022 under section 108 of the Customs Act, 1962 (in short Act of 1962) had been issued to the Managing Director of the petitioner Company by name.

3. The summon dated 27.04.2022 was directly issued to the Managing Director of the petitioner Company without providing the alternative of it being issued to an authorized representative.

4. Dr. A Saraf, learned senior counsel for the petitioner relies upon a circular bearing C.B.E & C Letter F. No. 208/122/89-CX.6 dated 13.10.1989 of the

Central Board of Excise and Customs, which provides for an instruction to the departmental authorities not to summon the Managing Director/Directors of any Company for enquiry. The relevant portion of the circular is extracted below:-

“Complain ??? have been received from the trade that in some of the Collectorates summonor??? "s 14 of the Central Excises & Salt Act, 1944 are being issued to the manag,???j Directors & other high officers with a view to enforce recovery of dues which are under dispute. Action under this Section is to be taken only as a last resort in cases where assesses are not cooperating or investigations are to be completed expeditiously. This Section should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed. If any instance of issue of summons to Managing Directors & other Directors without justification is noticed, a serious view will be taken by the board. Collectors will be held personally responsible for enforcing these instructions in their charges.”

5. A reading of the extracted portion makes it discernible that it is the practice of the Department not to issue the summons to the Managing Director or the other Directors without any justification and secondly, the summoning of the Managing Director or Director should be undertaken only as a last resort in cases where assesses are not cooperating or the investigations are to be completed expeditiously.

6. In the instant case, no material is available that there is a reasoned view formed by the Department that the petitioner assessee is not cooperating or that the presence of the Managing Director specific is required for the investigation for any reason.

7. In the circumstance, we dispose of this writ petition by directing the departmental authorities issuing the summons under Section 108 of the Act of 1962 not to issue summons directly to the Managing Director of the petitioner Company and on the other hand to issue it to an authorized representative of

the Company in terms of the provisions of the Circular dated 10.10.1989. The summons to be issued to the petitioner Company shall henceforth be done in the required manner by not directly requiring the Managing Director to be summoned and to act in accordance with the law provided in the circular dated 13.10.1989.

8. To facilitate the process, the Board of Directors of the petitioner Company shall authorize a competent person for the purpose and further summons be issued only to such authorized person. In view of the above, the summon dated 27.04.2022 be not acted upon and in its place modified summons may be issued in the manner as provided above.

The writ petition is disposed of in the above terms.

JUDGE

Comparing Assistant