(2014) 04 AP CK 0174

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9704 of 2014

3F Industries Ltd. APPELLANT

Vs

Commissioner of Cus., C. Ex. & S.T. RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Citation : (2015) 317 ELT 21

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J;Sanjay Kumar, J

Bench : Division Bench

Advocate : S. Ravi, Counsel, Advocates for the Appellant; V. Gopalakrishna Gokhaley, Counsel, Advocates for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—This writ petition has been filed basically against the inaction of the respondents for not carrying out the order passed by the learned Tribunal Commr. of Cus., C. Ex. and Service Tax Vs. 3F Industries Ltd., by not releasing goods detained by the respondent No. 2. Essentially, the writ petitioner wants implementation and execution of the order of the learned Tribunal. The Tribunal, of course, was approached by the petitioner for implementation of the order. However, the Tribunal was of the view that it had no jurisdiction to execute its own order.

2. The short facts of this case are required to be recorded.

3. The petitioner before us imported palm oil. According to the petitioner, it was edible crude palm oil. Therefore, the petitioner is entitled to have benefit of exemption under Notification No. 21/2002. The aforesaid oil was detained and lying in constructive custody of the respondent No. 2 even till today. The learned Tribunal has decided the matter finally holding that the oil imported by the petitioner falls within the exempted category under above notification. Therefore, upholding the contention of the writ petitioner, the appeal was allowed and the following orders were passed.

"In view of the above observations, we consider that the appellant is eligible for the benefit of notification and accordingly the appeal is allowed with consequential relief, if any, to the appellant."

4. In spite of the aforesaid order, the respondent-authority has not released the detained goods is the precise grievance of the petitioner before us.

5. A counter affidavit has been filed and it is said that the department is contemplating to prefer an appeal against the said order and the said order is not a correct order.

6. Mr. S. Ravi, learned Counsel appearing for the petitioner, says that when the Tribunal has passed a consequential order, the Department should have understood that the goods are required to be released without demur or objection, for, the moment the order is passed by the learned Tribunal, it becomes operative unless stay is granted by the appropriate forum.

7. Sri V. Gopalakrishna Gokhaley, learned Counsel for the Revenue, says that the period of limitation for preferring appeal has not expired and department is planning to prefer an appeal as such question of release of the goods does not arise.

8. In view of the aforesaid contention and counter contention, the question which has fallen for consideration in this matter is whether the order of the learned Tribunal is operative as on today, though no appeal has been preferred and period of preferring appeal has not expired.

9. According to us, the moment the order is passed, it becomes operative and can be implemented unless it is stayed by the appropriate authority. Unfortunately, there is no provision under relevant law for execution of that order. So, the petitioner approached this Court with this writ petition for implementation of the order of the learned Tribunal. According to us, this writ petition is maintainable when the Court finds that there has been inaction or refusal to take action of the respondent. In this case, at the moment, there is no legal justification to detain the detained goods in the face of the aforesaid order of the learned Tribunal, which is still valid and subsisting. We are of opinion if State or instrumentality of the State does not carry out lawful order of appropriate authority, it is not only arbitrary act but disobedience to order of lawful authority. While repelling the contention of the learned Counsel for the respondents that as the period of limitation has not expired to prefer appeal, the order cannot be acted upon, we hold prescribed period of limitation for preferring appeal has no correlation with enforceability of the order of Tribunal.

10. The remedy for the respondents is to take steps in accordance with law for obtaining stay of operation of that order. The period of limitation prescribed does not operate stay at all automatically. It only gives a time limit within which one has to take further proceeding. Just because Government is the litigant, the law will be read and applied differentially cannot be accepted by the Court.

11. Under those circumstances, we dispose of the writ petition directing the

respondents to release the detained goods within ten days from the date of receipt of a copy of this order after drawing a sample of the oil, provided of course, the operation of the order of the learned Tribunal is not stayed by the competent Court of law, within the time mentioned above.

12. We record that we have not decided and adjudicated in this proceeding with regard to legality, validity and propriety of the aforesaid order. All these questions are kept open.

13. The writ petition is accordingly disposed of. Consequently, the miscellaneous applications, if any pending, shall stand disposed of. No costs.