
(1991) 04 MAD CK 0047
In the Madras High Court
Case No : Writ Petition No. 4094/91

Almin and Glose Pvt. Ltd.

APPELLANT

Vs

Collector of C. Ex. and Cus.

RESPONDENT

Date of Decision : 01-04-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1992) 43 ECR 484 : (1991) 55 ELT 165

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : M/s C. Natarajan and N. Inbarajan, for the Appellant; Mr. K. Jayachandran, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Kanakaraj, J.—By an order dated 19-1-1990 the first respondent held that the petitioner is liable to the excise duty to the tune of Rs.

10,01,412.28 on the footing that the petitioner is not 100% export-oriented. The petitioner filed an appeal and also sought for the dispensation of

the pre-deposit for the amount due as per the order of the first respondent. By an order dated 18-7-1990, the second respondent held that the

petitioner had no prima facie case. However, on the ground that the balance sheet showed that a sum of Rs. 2,34,000/- was shown under the

column ""sundry debtors"" besides an entry showing a sum of Rs. 49,000/- as cash and bank balance due to the petitioner, the second respondent

directed that the petitioner should make a pre-deposit of Rs. 2,50,000/- on or before 31-10-1990. It must be mentioned here that the Department

had accepted the fact that the petitioner's Hosur Unit was not working for a long time. It is stated that the petitioner has paid a sum of Rs.

1,00,000/- only and filed an application for modification on 31-10-1990. Without

reference to the said application for a modification, the appeal itself was dismissed on 31-10-1990 on the ground that no amount had been paid. The petitioner thereupon filed an application to restore the appeal and the impugned order has been passed in the said restoration application. It is seen from the impugned order that the restoration application had come up earlier and the second respondent had directed the petitioner to show proof as to the pledging of the jewels of the petitioner's wife for making the deposit of Rs. 1,00,000/-. On the date when the impugned order was passed viz., on 11-3-1991, apparently on proof was produced regarding the pledging of the jewels. In view of this matter, the second respondent dismissed the application for restoration.

The writ petition is directed against the said order dated 11-3-1991.

2. Mr. Jayachandran, learned counsel for the respondents, argues that even while passing the earlier order on 18-7-1990, the second respondent had taken note of the circumstances and had directed only the payment of the one-fourth of the amount demanded by the first respondent. Further, the petitioner has to blame itself for making a representation that the sum of Rs. 1,00,000/- was paid on pledging of the jewels. Having made the statement and having failed to prove the same, the second respondent was justified in dismissing the application for restoration.

3. I am of the opinion that in matters relating to orders passed u/s 35F of the Central Excises and Salt Act, 1944, one has to look into the matter with some sympathy and at the same time having in mind the revenue aspect in the background. Normally when appeals are filed stay applications are entertained for the purpose of either staying fully or partially the orders of the first authority. But in this Act a special provision has been made that persons desirous of filing appeals deposit the entire duty demanded by the order appealed against. Proviso to Section 35F of the Central

Excise and Salt Act, 1944 reads as follows :

Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

It is no doubt true that the second respondent had passed an order on 18-7-1990 taking the hardship of the petitioner before directing the deposit of Rs. 2,50,000/-; but it cannot be disputed that the petitioner had filed an application on 31-10-1990 for modification after paying a sum of Rs. 1,00,000/-. Whether the petitioner had paid this amount by depositing the jewels of the wife of the Director of the petitioner Company or not is immaterial. The fact remains that the petitioner had made a genuine attempt to pay the amount and because the petitioner could not pay the amount of Rs. 2,50,000/-, the petitioner came forward with an application for modification on 31-10-1990. The second respondent (Tribunal) ought to have looked into the whole aspect of the matter with reference to the modification application instead of dismissing the application for restoration merely on the ground that the petitioner had not given proof regarding the pledging of the jewels of the wife of the Director of the petitioner firm. I have already stated that it is an irrelevant consideration. What one has to see is whether the petitioner is genuinely hard pressed for making the payment of Rs. 2,50,000/-. When a person comes up with an application expressing difficulties, one has to find out whether the difficulties placed before the authority are genuine and required consideration or not. In this case, it is not seriously disputed that the petitioner's Unit had been closed. Therefore, I am of the opinion that the appeal of the petitioner should be taken for hearing and disposed of one way or the other. Ultimately if the petitioner fails in the petition, as to how it will pay the amount is a different matter; but pending disposal of the appeal, some consideration should be shown to the petitioner. In this view of the matter I hold that the second respondent has taken note of circumstances which are not totally relevant in dismissing the application for restoration. Accordingly, the impugned order is quashed and the appeal is directed to be restored and disposed of by the appropriate Bench without making any further demand from the petitioner as early as possible. If the appeal is disposed of earlier it will be better for revenue because the demand will become final after the disposal of the appeal. The writ petition is allowed with the above observation. There will be no order as to costs.