
(2016) 04 GUJ CK 0090

In the Gujarat High Court

Case No : Special Civil Application No. 3248 of 2016

Anil Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-04-2016

Acts Referred:

Citation : (2016) 341 ELT 63

Hon'ble Judges : Akil Kureshi and A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : Shri D.K. Trivedi, Advocate, for the Petitioner; Shri Darshan M. Parikh, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Akil Kureshi, J.(Oral) - Petitioner has prayed for a protection against recovery in connection with an order in original dated 25-1-2001, which by way of a second appeal is subject matter before the CESTAT in Appeal No. E-1227/03. It is undisputed that in such appeal, the Tribunal had granted stay against the recoveries. The petitioner was granted periodical extensions of stay also. However, the department has been pressing for recoveries since last couple of years on the ground that the petitioner is unable to produce the order of the Tribunal extending such interim relief. In that background, the petitioner has filed this petition.

2. Having heard learned counsel for the parties, we gather that the appeal before CESTAT was originally presented before the Bench at Mumbai. After setting up of Tribunal at Ahmedabad in the year 2007, such appeal along with other appeals falling within the jurisdiction of the Ahmedabad CESTAT, had to be transferred. It appears that on account of this reshuffling, the appeal papers in the present case are not easily traceable. From the letter dated 2-7-2014 written by Deputy Registrar, CESTAT, Ahmedabad to Deputy Registrar, CESTAT, Mumbai, we gather that till such date, the appeal papers were not received by the Tribunal at Ahmedabad. In this background, the case of the petitioner is that the stay

extension application could not be decided by the CESTAT, Ahmedabad. The petitioner is not responsible for any delay either in hearing of the appeal or in pursuing the application for extension of stay. According to the petitioner therefore, in the meantime, the department cannot be allowed to affect the recovery.

3. We share the concern of the department that the recoveries in the present case has been stalled for over 10 years by now, even after filing an appeal before the Tribunal. The petitioner's appeal before the Tribunal therefore must be heard as early as possible. However, a stay which was granted as far back in the year 2003, cannot be vacated in facts of the present case when we find that the Tribunal is unable to either hear the appeal or to decide the petitioner's application for extension of stay for want of the appeal papers.

4. Under the circumstances, the petition is disposed of with following directions :

I. The petitioner shall reconstruct the appeal before the Tribunal latest by 25-4-2016 with a copy to the department.

II. If so done, the Tribunal is requested to grant priority consideration to such appeal and dispose of the same latest by 30-6-2016.

III. Till 30-6-2016, there shall be no coercive recovery.

5. If for some reason the Tribunal is unable to decide by 30-6-2016, it would be open for the petitioner to apply for extension of stay which application shall be decided on its own merits unmindful of this order. In other words question of extension of stay will depend on facts as may emerge.

6. Petition disposed of accordingly.