

(1999) 04 AHC CK 0235

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 365 of 1998

Ashok Iron and Steel Mills

APPELLANT

Vs

CEGAT

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Central Excise Rules, 1944 — Rule 96ZP, 96ZP(2)
Central Excises and Salt Act, 1944 — Section 35F, 3A, 3A(3)
Constitution of India, 1950 — Article 226

Citation : (2000) 67 ECC 62 : (1999) 113 ELT 778

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : A.P. Mathur, for the Appellant; Surya Prakash, for the Respondent

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India, the petitioner challenges an order dated 22-5-1998 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/1196/98-B1 by which the Tribunal in exercise of powers under the proviso to Section 35F of the Central Excise Act, 1944 directed the petitioner to deposit Rs. 3.5 lacs out of the adjudicated dues of Rs. 7,23,116/- and waived the demand for the balance.

2. I have heard Shri A.P. Mathur, learned Counsel for the petitioner and Sri Surya Prakash, learned Standing Counsel for the respondents.

3. The petitioner has preferred an appeal before the Tribunal against an order dated 26-3-1998 passed by the Commissioner, Central Excise Allahabad using the aforesaid demand.

4. The petitioner had set up a steel rolling mill and in pursuance of a scheme contained in Rule 96ZP framed u/s 3A of the Act, opted to pay Excise duty on the basis of the capacity of the works. The proviso to Sub-section (3) of Section 3A provides that where a factory producing notified goods did not produce the

notified goods during any continuous period of not less than seven days, duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed. Sub-rule (2) of Rule 96ZP contains the detailed conditions on the fulfillment of which the Commissioner of Central Excise has to pass an order of abatement.

5. The disputed demand is for the period 12-11-1997 onwards. The petitioner had intimated to the Asstt. Commissioner, Central Excise by a letter dated (sic)-11-1-1997 that they are closing the Unit for urgent repairs and will inform when the Unit restarts production. The Commissioner took the view that no abatement is admissible to hot re-rolling steel mills. This order, a copy of which is Annexure A2 to the writ petition, does not give any reason for this view, although Rule 96ZP in its very title states "procedure to be followed by the manufacturer of hot re-rolled products."

6. Aggrieved by the order, the petitioner has filed the aforesaid appeal before the Tribunal which cannot be entertained unless the adjudicated dues are deposited with the adjudicating authority. The proviso to Section 35F however, authorises the appellate authority to waive the condition of pre-deposit, on such condition as it thinks fit, if it is of the opinion that the deposit of adjudicated dues would cause undue hardship to the appellant. It is under the proviso that the petitioner has moved an application before the Appellate Tribunal and the impugned order has been passed. The Tribunal has observed that the merits of the matter are contentious and require detailed examination at the time of hearing of the appeal. It is also mentioned that the applicants have not made out a strong prima facie case for waiver.

7. The learned Counsel for the petitioner contended that the petitioner has a very strong prima facie case so far as the merits are concerned because the closure of the factory for a continuous period of more than seven days is not disputed. It is also contended that the petitioner's mill being closed, it is not possible for the petitioner to pay the amount, as directed by the Tribunal.

8. The learned Standing Counsel on the other hand contended that the petitioner did not make out any case of financial hardship and on the merits of the claim, the Department's case is also strong.

9. I have given my careful considerations to the respective arguments. Patently it is a case of demand of duty in respect of the goods, that have not been produced. The closure of the factory is not disputed. The Tribunal itself has found that the matter is contentious which means that on merits, the petitioner has an arguable case. Regarding the financial hardship, no doubt the petitioner has not specifically alleged before the Tribunal that it is in the adverse financial circumstances. In the writ petition also, it is not so averred but the fact remains that the petitioner's mill has stopped production and does not seem to have been restarted. In all these circumstances, I am of the view that the pre-deposit of a substantial amount of Rs. 3.5 lacs would cause undue hardship to the

petitioner and the Tribunal should have required the petitioner to deposit only a nominal amount.

10. This writ petition is, therefore, allowed and it is directed that in case the petitioner deposits Rs. 50,000/- before the adjudicating authority by the 10th of May, 1999, the condition of pre-deposit of the balance shall stand waived. The parties will bear their own costs.