(2003) 11 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 16199 of 2003

Ashok Travels APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (2005) 124 ECR 305 : (2005) 184 ELT 24

Hon'ble Judges : K.A. Puj, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Prashant G. Desai, for the Appellant; D.N. Patel, for the Respondent

Final Decision : Allowed

Judgement

A.R. Dave, J.—Rule. Service of rule is waived by learned Sr. Central Government Standing Counsel Shri D.N. Patel for the respondents. At the request of the learned Advocates, the petition is finally heard today.

2. The petitioner has challenged the validity of the order dated 16-10-2003, whereby the petitioner''s application for stay has been rejected and the petitioner has been directed to deposit a sum of Rs. 50 lakhs as pre-deposit under the provisions of Section 35F of the Central Excise Act, 1944, within a period of 10 days from the date of receipt of the said order.

3. Learned Advocate Shri P.G. Desai appearing for the petitioner has submitted that the said order is unjust and improper. Apart from that, he has submitted that the order is very harsh because it would be very difficult for the petitioner to deposit the said amount as the petitioner had never collected the amount of tax, and more particularly when the petitioner is not liable to pay the tax asked for.

4. Learned Sr. Central Government Standing Counsel Shri D.N. Patel appearing for the respondent authorities has tried to justify the impugned order.

5. We have heard the learned Advocates. Without going into the merits of the

case, looking to the facts of the case, we had also felt that the impugned order was in fact very harsh and, therefore, by an order dated 19-11-2003, we had directed the petitioner to deposit a sum of Rs. 10 lakhs by way of pre-deposit. The said amount has already been deposited by the petitioner. In our opinion, the deposit of Rs. 10 lakhs would serve the purpose and, therefore, we modify the impugned order dated 16-10-2003 to the effect that the petitioner be asked to deposit only a sum of Rs. 10 lakhs, which he has already deposited.

6. Looking to the contents of the said order dated 16-10-2003, the petitioner apprehends that possibly the Commissioner (Appeals) has made up his mind to dismiss the appeal. It has been submitted that while deciding the said application, the appellate authority has gone into the merits and has come to a conclusion that the petitioner''s appeal deserves to be dismissed.

7. We have gone through the said order. It appears that only a prima facie view has been expressed by the appellate authority and we are sure that the appellate authority shall hear the petitioner or his representative and shall form a final opinion only after considering the arguments, which might be advanced at the time of hearing of the appeal. We are also sure that the prima facie observations made in the impugned order dated 16-10-2003 will not prejudicially affect the petitioner at the time when the appeal is heard.

8. We are sure that the appellate authority shall consider all contentions, which might be raised on behalf of the petitioner, including the contention that the petitioner is not a tour operator and therefore is not liable to pay any service tax, at the time of hearing of the appeal and the same shall be decided in accordance with law without being influenced by the fact that the stay application was rejected in the past. If the petitioner submits an application for an early hearing of the appeal, we are sure that the said application shall be considered and efforts shall be made to see that the appeal is disposed of at an early date.

9. The impugned order is modified to the effect that the petitioner would be liable to deposit a sum of Rs. 10 lakhs by way of pre-deposit, and as the said amount has already been deposited in pursuance of an interim order passed by this court, no further amount is required to be deposited by the petitioner.

The petition is allowed. Rule is made absolute to the above extent with no order as to costs.

