

(1998) 03 AHC CK 0019

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 148 of 1998

Bajaj Carpet Industries Ltd.

APPELLANT

Vs

CEGAT

RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F
Constitution of India, 1950 — Article 226

Citation : (1998) 78 ECR 270 : (1998) 101 ELT 27

Hon'ble Judges : R.K. Gulati, J

Bench : Single Bench

Judgement

R.K. Gulati, J.—Heard learned Counsel for the petitioner.

2. The petitioner has prayed for two-fold reliefs. Firstly, that a writ of certiorari be issued quashing the order dated 22-10-1997 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi and secondly, a writ of mandamus be issued directing the respondents to refund Rs. 15,75,276.56 P deposited by the petitioners in terms of Section 35F as the aforesaid Tribunal has failed to give expeditiously the decision on the issue of classification of the products manufactured by the petitioner.

3. The petitioner is allegedly engaged in the manufacture of Jute Floor Covering. The case of the petitioner is that the product manufactured by it should be classified under Chapter sub-heading 5703.20 of the Central Excise Tariff Act, 1985 and not under Chapter sub-heading 5703.90 of the said Act. It may be observed that the Commissioner of Central Excise (J) Meerut, the second respondent has held that the products manufactured by the petitioner are dutiable under sub-heading 5703.90 and against his decision, an appeal preferred by the petitioner is pending decision before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi. Along with the appeal, the petitioner had filed an application for stay and waiver of the pre-deposit as contemplated u/s 35F of the Excise Act. The Tribunal decided the stay application by its order dated

22-10-1997 a copy of which has been filed as Annexure-4 to the writ petition. It is against this order that the petitioner has sought a writ of certiorari seeking quashing thereof as stated earlier.

4. Before the Tribunal it appears that the petitioner had shown its willingness to pay the entire disputed amount and had prayed for an early hearing of the appeal. This is apparent from the following observation appearing in the Tribunal's order:

"...Alternatively, he submitted that the assessee is ready to pay the amount in question and on passing such order, the Tribunal may grant out of turn hearing. After hearing the Id. DR and in view of the offer made by the appellants, we direct the appellants to pay the amount in question on or before 30-10-1997. On payment of such amount, the assessee is at liberty to file an application for out of turn hearing. Stay application is disposed of accordingly."

5. Since the petitioner itself had agreed to pay the disputed amount, it cannot be heard to say that it is aggrieved by the order passed by the Tribunal. The prayer for quashing of the order dated 22-10-1997 in these circumstances, cannot be granted. It is accordingly, rejected.

6. The second relief sought by the petitioner is more or less consequential, as the refund of the amount cannot be directed until the petitioner succeeds on merits and the matter is still sub-judice before the Tribunal.

7. The learned Counsel for the petitioner attempted to argue that the classification under which the product manufactured by the petitioner has been held dutiable, was incorrect and therefore, this Court may intervene directing the respondents not to assess the products manufactured by the petitioner under Chapter sub-heading 5703.90 and to classify it product under Chapter sub-heading 5703.20 of the Central Excise Tariff Act.

8. The question whether the product manufactured by the petitioner is covered under Chapter sub-heading 5703.90 or not is receiving the consideration of the Tribunal where the appeal filed by the petitioner is pending. As to what is the correct sub-heading under which the product of the petitioner is covered, is essentially a question of fact, which cannot be conveniently decided in these proceedings under Article 226 of the Constitution of India on the basis of the affidavits alone. Moreover, the petitioner has not only an effective alternative remedy, but it has also availed of it and is pursuing the same. In these circumstances, there is no justification to entertain this writ petition and to permit the petitioner to by-pass the statutory remedy where it can seek redressal of its grievances. However, it may be observed that the petitioner has already filed an application before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi for out of turn hearing of the appeal, but according to the petitioner, no action has been taken by the Tribunal so far. In the order dated 22-10-1997 the Tribunal itself had given the liberty to the petitioner to move an application for early hearing of the appeal. On the facts of the case, it

was expected that the Tribunal will take all necessary steps for an early disposal of the appeal filed by the petitioner. If this has not been done so far, the Tribunal is directed to decide the appeal of the petitioner in accordance with law and expeditiously, preferably within three months of production of a certified copy of this order before it by the petitioner.

9. Subject to the above, the writ petition is rejected in limine.