

(1999) 03 CAL CK 0041
In the Calcutta High Court
Case No : Writ Petition No. 632 of 1999

Bata India Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Finance (No. 2) Act, 1998 — Section 90, 90(1)

Citation : (1999) 108 ELT 335

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : R.N. Bajoria, S.K. Bagaria, J.P. Khaitan and C.M. Jain, for the Appellant; N.C. Roychoudhury, for the Respondent

Judgement

Ajoy Nath Ray, J.—This is a writ application in regard to an order passed by the Designated Authority u/s 90(1). The date of the order is 26-2-1999 and the amount determined as payable is Rs. 14,00,82,192/-.

2. As per the declaration of the writ petitioner assessee, the amount payable is Rs. 7,88,34,860/-.

3. The Designated Authority has passed a reasoned order (starts from page 56) and a perusal of it shows the reason why there is difference between the computation by the assessee and the authority's computation.

4. Although an appeal before the Tribunal is pending in regard to the entirety of the excise duty amount of Rs. 15,76,69,719.39, yet the Designated Authority has opined that with regard to an amount of Rs. 12.25 crore approximately "There is virtually no appeal".

5. The Designated Authority has, therefore, taken Rs. 12 crore and odd as payable in the entirety and it has added to that sum half of Rs. 15 crore approx. minus Rs. 12 crore approx.

6. The point in issue is whether the Designated Authority has jurisdiction to

assess the merits and demerits of the appeal pending, and shape and fashion the Designated Authority's order on the basis of such assessment.

7. Under the first Sub-section of Section 90 it is quite clear that the Designated Authority has to determine the amount payable under the Kar Vivad Samadhan Scheme; what the excise duty would be, as per determination of the substance of the matter, on the facts and the law of the case, is not the jurisdiction of the Designated Authority. That is the jurisdiction of the Tribunal, to take the present instant case.

8. The Kar Vivad Samadhan Scheme appears to be a mechanical one where, if a dispute is pending the parties buy peace and settle for half be it of advantage to the assessee or to the Revenue.

9. The writ application has, therefore, prima facie substance. The order and observations herein are without prejudice.

10. Rule as prayed for.

11. Matter is made returnable 20 weeks hence.

12. In case the writ petitioner tenders to the respondent No. 1 a sum of Rs. 7,88,34,860/- within 30 days of 26-2-1999, then and in that event the respondent No. 1 shall accept the said sum and is directed to make the acceptance without demur or protest, notwithstanding the Designated Authority's order dated 26-2-1999 or any other order or provision of law. Such payment and acceptance shall also be without prejudice. In case of such tender by the writ petitioner within the time aforesaid there shall be interim orders in terms of prayers (e), (f) and (g) of the writ petition until further orders of Court. In case the payment is not tendered as aforesaid, the writ application shall stand rejected.

13. Affidavit-of-service be accepted. Rule may hereafter be served without copy petition as those have already been served.

14. All parties and all others concerned to act on a signed xerox copy of this dictated order on the usual undertakings.