(1999) 04 AHC CK 0215

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 336 of 1999

Beltak Canadian Water Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 09-04-1999

Acts Referred:

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

Citation : (2000) 70 ECC 181 : (1999) 84 ECR 842 : (2000) 118 ELT 19

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

Bench : Single Bench

Advocate : Bharat Ji Agarwal, for the Appellant; S.N. Srivastava, Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India, the petitioner challenges an order, dated 24-3-1999 by which in an appeal pending before the Commissioner (Appeals), Customs and Central Excise, Ghaziabad, the petitioner has been directed to make a pre-deposit of 50% of the adjudicated dues and the conditions of the pre-deposit of the balance has been waived.

2. Heard Shri Bharat Ji Agarwal, learned Senior Advocate for the petitioner and Shri S.N. Srivastava, learned Chief Standing Counsel for the Union of India.

3. The petitioner manufactures water dispensing units for cold as well as hot water and the question is about its proper classification for the purposes of the levy of Central Excise. The petitioner was paying duty on the said item as an unclassified item under entry 8479 while according to the revenue the said commodity falls under Item No. 8418.10 and the Asstt. Commissioner has raised a demand of Rs. 28,68,747/- which is under challenge before the Commissioner. By virtue of Section 35F an appeal cannot be entertained unless the adjudicated dues are deposited with the adjudicating authority. The appellate authority,

however, has the power to waive the condition of pre-deposit wholly or partially if it is of the opinion that undue hardship will be caused to the appellant it is refused to deposit the amount. It is under that power that the Commissioner has waived the condition of pre-deposit to the extent of 50%. The petitioner''s case is that it has a strong arguable case and its financial position does not permit it to make the deposit. According to it, it has already exceeded the over draft limit of Rs. 35 lacs granted to it by the State Bank of India and it will not be able to raise further fund.

4. No counter affidavit is proposed to be filed and the matter has been finally heard at the admission stage.

5. The impugned order passed by the Commissioner shows that there are divergent views taken by the authorities on the matter and some of the authorities of the revenue have accepted the stand similar to the one taken by the petitioner. The learned counsel for the Commissioner has not dealt with the financial aspect of the matter, though it was specifically pleaded in paragraph 2 of the petition that the appellant is facing acute financial hardship and the business is running on borrowed capital. It would cause undue hardship to the petitioner to compel it to borrow money and pay it to the Government. Even if it succeeds in appeal, no interest will be payable by the revenue atleast for the period during which the appeal remains pending.

6. In my view, it is fit case in which the petitioner''s prayer for waiving the condition of pre-deposit fully should have been accepted.

7. The writ petition is, therefore, allowed and modifying the Commissioner''s order, dated 24-3-1999, it is ordered that the condition of pre-deposit is fully waived and the petitioner''s appeal shall be disposed of very expeditiously.

