
(1999) 07 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition No. 1308 of 1999

Birla Corporation Limited	Vs	APPELLANT
Commissioner of Customs		RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

Finance (No. 2) Act, 1988 — Section 87, 95

Citation : (2000) 67 ECC 40 : (1999) 113 ELT 810

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : J.P. Khaitan and G. Chatterjee, for the Appellant; A. Laha, for the Respondent

Judgement

Ajoy Nath Ray, J.—In this case the declaration was filed on 10-12-1998 and the refusal by the designated authority came in February and April, 1999.

2. The tax is direct tax by way of customs duty and the amount which was declared to be payable, being half the amount endorsed as a demand on the Bill of Entry was Rs. 3,27,804.69P.

3. In my opinion, the endorsement on the Bill of Entry is itself a demand and as such Section 87 of Part IV of the Finance (No. 2) Act, 1988 is attracted.

4. Further a writ application being already pending regarding the aforesaid demand, the bar u/s 95 is not also applicable as Section 95(ii) works in favour of the writ petitioner.

5. While the present writ application is pending, if the writ petitioner pays the declared amount, there should be no further departmental proceeding or prosecution. This is because the matter is seriously arguable and has to be tested out in the writ.

6. If the writ petitioner pays the designated authority being the Respondent No. 1, a sum of Rs. 3,27,804.69P within a period of four weeks from date hereof, the

said respondent shall accept the said sum without demur or protest and shall issue the necessary certificate under KVSS. Such payment and acceptance of money and issuance of certificate shall be without prejudice to the rights and contentions of the parties and subject to the final result of the writ.

7. In case the payment is not made as aforesaid, the writ application shall stand rejected. In case of payment, there should be no further departmental proceeding or prosecution pending disposal of the present writ, for the purpose of making the aforesaid payment, the writ petitioner shall be entitled to withdraw the monies with UCO Bank, on the basis of which bank guarantee was furnished by that bank for the benefit of the writ petitioner in the earlier writ which has been standing to the credit of the learned Registrar, Appellate Side, Calcutta; such bank guarantee shall stand discharged. Upon such discharge and withdrawal of the securing monies by the writ petitioner from the bank, needless to mention, the writ petitioner shall lose the protection of the interim order passed in the earlier writ but shall enjoy the present protection upon payment as ordered above.

8. The orders and observations are without prejudice.

9. Formal drawing up and service of Rule are dispensed with.

10. Affidavit-in-opposition be filed within eight weeks from date and reply there to be filed within four weeks thereafter.

11. The matter will appear in the list on the working day following.

12. The learned Registrar, Appellate side is to return the bank guarantee mentioned above so that the writ petitioner might make payment as ordered.