
(1989) 12 BOM CK 0028

In the Bombay High Court

Case No : Appeal No. 1410 of 1989 in Writ Petition No. 3189 of 1989

Bralco Metal Industries Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1990) 29 ECR 66 : (1990) 47 ELT 322

Hon'ble Judges : S.K. Desai, J;M.P. Kenia, J

Bench : Division Bench

Judgement

Desai, Member (J).

1. This appeal can be disposed of at the stage of admission. Accordingly the appeal is admitted. Respondents waive service. Appeal is taken up for hearing.
2. The order of the learned Single Judge impugned in this appeal is one refusing issue of Rule on the basis that the order of the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) is a discretionary order and this Court under Article 226 of the Constitution of India ought not to interfere with the exercise of discretion.
3. We are aware that in number of matters this Court has considered the orders of deposit passed by CEGAT. We have been pointed out that in the instant case the CEGAT has considered only financial hardship of the appellants before it whereas in many matters merits of the appeal have been considered by the Tribunal in reducing the quantum of deposit or waiving it altogether.
4. It has been submitted before us that the Appellants are prepared to give bank guarantee in respect of the full amount and the appellants are further agreeable, in the event of dismissal of their appeal by CEGAT, to pay interest on the said amount. The appellants undertake to pay the interest at the rate of 12% per annum on a simple basis, if at all to be awarded, as from today till the amount is received by the Revenue. CEGAT to decide whether any interest is to be paid by

the Appellants on the amount they are held liable to pay.

5. Accordingly, allowing the Appeal, we set aside the order of the learned Single Judge and issue Rule.

6. The Advocate for the respondents before us (respondents to the petition) states that order in the aforesaid terms may be made in the petition and Rule may be disposed of by the Bench so that they will not have to go again before the learned Single Judge. The Advocate for the Writ Petitioner consents. The Rule is therefore, taken up for hearing.

7. The Writ Petition is preferred against the order of CEGAT to be found at Ex. E. In lieu of cash deposit, we permit the appellants to give bank guarantee in the amount of Rs. 5,12,000/-. The Bank guarantee to be given in the agreed format on or before 23rd January, 1990. If the Appellants fail to give bank guarantee (which is to be kept alive till the appeal before CEGAT is disposed of) by the specified date, the appellants may deposit on or before 31st January 1990 the aforesaid amount viz. Rs. 5,12,000/- in cash. In case the bank guarantee is not furnished by 23-1-1990 or cash in lieu of the bank guarantee not deposited by 31-1-1990, the Appeal before CEGAT may be dismissed by CEGAT for non-compliance with the said condition.

8. This disposes of the Writ Petition. Parties to bear their own costs of the Appeal as also Writ Petition.

9. The format of the bank guarantee, as agreed, to be kept on record of this Appeal.