

(1988) 02 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 272 of 1988

Devidayal Non-ferrous Industries Pvt. Ltd.	APPELLANT
Vs	
The Superintendent of CE and Others	RESPONDENT

Date of Decision : 02-02-1988

Acts Referred:

Citation : (1988) 16 ECR 122

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Pratap, J.—Rule, returnable forthwith. Respondents waive service.

2. Against the order dated 12th November 1987 at Exhibit N by the Assistant Collector, Central Excise, Division "E", Bombay-1, an appeal lies to the Collector of Central Excise (Appeals), Bombay. The said appeal would be a full-fledged appeal on facts, law and evidence. In the circumstances, I see no good reason why the petitioner should not prefer against the aforesaid order, if aggrieved thereby, an appeal as provided by the Statute. Counsel for the petitioner now states that the petitioner will accordingly file an appeal. He, however, submits that the recovery of the demand in question may be stayed till then. In the alternative, he states that the petitioner is agreeable to furnish the requisite bank guarantee.

3. In the light of the undisputed fact that the petitioner has already preferred appeal against the order of 5th June, 1987 of the Assistant Collector rejecting the claim for exemption and as the said appeal is pending with the Collector of Central Excise (Appeals), I am inclined to permit the petitioner to furnish bank guarantee of the requisite amount in the event of the petitioner filing appeal against the presently impugned order of 12th November, 1987.

4. Hence order:

(a) The petitioner is at liberty, if so advised, to prefer appeal against the order dated 12th November, 1987 to the Collector of Central Excise (Appeals).

(b) In the event of such appeal being preferred, the same should be entertained and decided on merits and in accordance with law, provided the petitioner furnishes in favour of the Collector of Central Excise (Appeals) within four weeks from today bank guarantee of a nationalised bank in the sum of Rs. 1,40,000/- covering the entire demand and the penalty. In default of the petitioner furnishing bank guarantee an aforesaid, the appeal shall stand dismissed.

(c) The aforesaid appeal, if preferred, may be preferably heard along with the petitioner's pending appeal against the order dated 5th June, 1987 of the Assistant Collector of Customs rejecting the petitioner's claim for exemption.

(d) the Appellate Authority viz., the Collector of Customs (Appeals), may hear and decide these appeals as expeditiously as possible.

5. In view of the aforesaid directions, this petition is allowed to be withdrawn.