(2004) 10 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 9940 of 2004

Elecon Engineering Co. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-10-2004

Acts Referred:

Citation : (2005) 122 ECR 38 : (2005) 182 ELT 148

Hon'ble Judges : K.A. Puj, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Trivedi and Gupta, Jitendra Malkan, C.G.S.C. and Nayna Gadhvi, Addl. C.G.S.C., for the Respondent

Judgement

A.R. Dave, J.—RULE. Service of Rule is waived by learned Senior Central Government Standing Counsel Shri Jitendra Malkan for the respondents. At the request of the learned Advocates, the petition is finally heard today.

2. As an appeal filed by the petitioner is pending before the Commissioner (Appeals) of Central Excise and Customs, Vadodara and the issue involved in this application is only with regard to the amount of pre-deposit, we would not like to say anything on the merits of the case which is pending before the appellate authority.

3. The short question which has been involved in the petition is with regard to the amount of pre-deposit. An application for waiver of the amount of pre-deposit had been turned down by the Commissioner (Appeals) of Central Excise and Customs under his order dated 27-7-2004 and being aggrieved by the said order, the petitioner has approached this Court.

4. Learned Senior Standing Counsel Mr. Jitendra Malkan appearing for the respondents has taken a preliminary objection and has vehemently argued that in the matters where discretion with regard to determination of the amount of pre-deposit has been exercised by the appellate authority, this Court should ordinarily not interfere as observed by this Court on 10-9-2004 in the case of

Sterlite Industries (India) Limited v. Union of India, S. C. A. No. 11489 of 2004. We have considered the said argument. However, looking to the facts of the case, we are of the opinion that the discretion had not been properly exercised by the Commissioner (Appeals) for the reasons stated hereinbelow.

5. Upon hearing the learned Advocates and looking to the facts of the case, it appears that the discretion had not been properly exercised by the appellate authority in the matter of determination of the amount of pre-deposit. In view of the order passed by CESTAT in the case of 2003 (89) ECC 140 , and confirmed by the Hon''ble Supreme Court [2004 (170) E.L.T. A181 (S. C)] and in the matter decided by CESTAT in case of 2004 (174) ELT 322 , in our opinion, lenient view ought to have been taken while determining the amount of pre-deposit.

6. Looking to the facts of the case, we are of the opinion that it would be just and proper to direct the petitioner to deposit 10% of the amount of assessment within a period of 8 weeks from today. After the said amount is deposited, the Commissioner (Appeals) of Central Excise & Customs shall hear the appeal and shall make an effort to dispose it off as soon as possible. Learned Advocate appearing for the petitioner has assured this Court that the petitioner shall extend full co-operation to the Commissioner (Appeals) so that the appeal can be decided at any early date.

7. In view of the above order, the petition stands disposed off as allowed. Rule is made absolute to the above extent with no order as to costs.

8. Learned Senior Central Government Standing Counsel Mr. Jitendra Malkan has requested that implementation of this order should be stayed for a period of four weeks from today. We do not see any justifiable reason for the same and hence, the said request is rejected.