
(1998) 04 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 1009 of 1998

Furn Plastics

APPELLANT

Vs

Asstt. Commissioner of C. Ex.

RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35, 35F

Citation : (1998) 101 ELT 14

Hon'ble Judges : S.P. Kulkarni, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari, for the Appellant; Choube, for the Respondent

Judgement

B.N. Srikrishna, J.—Rule returnable forthwith. Respondents waive service through Mr. Choube. By consent, Rule is called out for hearing and heard finally.

2. The petitioner has filed an appeal before the Commissioner of Appeals, Central Excise (second respondent) u/s 35 of the Central Excise Act, 1944. The petitioner simultaneously moved an application u/s 35F of the Act seeking stay of the execution of the orders and dues which were appealed against. For reasons which we find it difficult to understand, the Commissioner kept the application pending without passing any orders thereupon. The petitioner came to this Court by his Writ Petition No.296 of 1998 complaining against this inaction on the part of the second respondents. This Court by an order made in Writ Petition No. 296 of 1998 directed the second respondent to hear and dispose of the application u/s 35F (stay application) on or before March 31,1998.

3. Apparently, the second respondent - Commissioner was peeved by the order made by this Court (we are saying this on the basis of his action and manner in which he dealt with the matter subsequently) and on March 19,1998 issued a telegram to the petitioner at Nagpur to attend the hearing of Section 35F application on that day at Bhopal. It was obviously impossible for the petitioner to do so. The second respondent thereupon made an order dated March

19/23,1998 impugned in this writ petition, dismissing the stay application on the ground that the petitioner did not turn up for the personal hearing and that as he was busy with the election duty which he was to attend, he was unable to hear the matter before March 31,1998. Being aggrieved thereby, the petitioner is before this Court by the present writ petition.

4. To say the least, we find the conduct of the second respondent extraordinary and inexplicable. He should have realised that this Court made the earlier order dated February 23,1998 only because of inaction on his part. If he had election duty because of which he could not have given a proper hearing to the petitioner, the second respondent, should have sought further time from this Court and fixed a date for hearing of the application at his own convenience. The manner in which he has dealt with the matter gives the impression that he was being driven to this order for one reason or the other, the second respondent should realise that he has to act in a quasi-judicial manner; his approach in making the impugned order is hardly quasi-judicial. We refrain from saying anything further.

5. In the result, we are satisfied that the impugned order needs to be quashed and set aside. The impugned order of the second respondent dated March 19/23, 1998 is hereby quashed and set aside. The application of the petitioner made u/s 35F of the Act is restored to file and the second respondent is hereby directed to take up the matter for hearing on April 24, 1998 on which day the petitioner has assured the Court that he would present himself before the second respondent without any further notice. The second respondent - Commissioner is directed to hear the application of the petitioner on that day and make appropriate orders in accordance with law, consistent with the principles of natural justice.

6. Rule is accordingly made absolute with no order as to costs.