(1993) 12 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2201 of 1993

Gajra Bevel Gears Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 02-12-1993

Acts Referred:

Citation : (1996) 56 ECC 100 : (1995) 80 ELT 505

Hon'ble Judges : V.S. Kokje, J;R.D. Shukla, J

Bench : Division Bench

Advocate : J.W. Mahajan, for the Appellant; B.G. Neema, for the Respondent

Judgement

1. Having heard the learned counsel we are of the opinion that instead of admitting this petition for final hearing, it can be disposed of at this stage alone with suitable observations as the point involved is simple

2. The petitioner-company complains that the Collector (Appeals), before whom its appeal is pending is not deciding the application of the Company for exemption from the condition of pre-deposit of the amount recoverable under the order appealed against and the Department is proceeding to recover the amount. Shri Mahajan attempted to convince us that there was a prima facie case in favour of granting exemption from the condition of pre-deposit. However, we are not prepared to hear and decide the application for exemption from the condition of pre-deposit on merits. The grievance of the petitioner that the application is not being decided and in the meanwhile, recovery is being ordered, appears to be genuine.

3. Whenever an appeal is filed along with an application for exemption from payment of the duty/penalty recoverable under the impugned order and stay against recovery on the basis of the impugned order is prayed for, it is the duty of the appellate authority to dispose of these applications immediately. In any case, the respondents cannot take the advantage of the situation by keeping the applications for stay pending and in the meanwhile proceeding to recover the

amount.

4. Shri Mahajan pressed into service a decision of the Allahabad High Court dated 26-8-1992 in Kanpur Plastic Pack v. U.O.I. and of this court in Ramdarshan Rolling v. Union of India (Misc. Petition No. 1371/89 decided on 28-1-1992), wherein in the similar circumstances the High Court had intervened and granted a stay order.

5. We, therefore, dispose of this petition by giving a direction that the application for stay and/or application for waiving the condition of pre-deposit of the amount of duty recoverable under the impugned order, shall be disposed of by the respondent No. 2, before the respondents proceed to recover any amount recoverable under the impugned order, which has been appealed against before the Collector (Appeals), Indore. We also direct that the respondents shall not recover any amount recoverable under the order appealed against before the Collector (Appeals) till the Collector (Appeals) decides the application for waiving the condition of pre-deposit of the amount recoverable under the impugned order and/or the application for stay of recovery proceedings. It would be in the interest of the Department itself that these applications are decided without any further loss of time and we expect that the Collector (Appeals) shall dispose them of within a month from today. We are constrained to observe that such complaints are, these days, frequently being brought before the High Court that the Appellate Authority does not decide the application for waiving the condition of pre-deposit of the amount due under the impugned order and/or application for stay or recovery under the impugned order and the Excise Department proceeds to recover the amount. Such an action or inaction cannot be justified. It is expected of a fair administration that when it is seized of the matter regarding stay of recovery, it would not proceed to recover the amount even before the application for stay is disposed of by it. We hope steps will be taken at the Departmental level itself to save the inconvenience and harassment to the appellants.

6. With the aforesaid observations, this petition is disposed of.