

(2007) 02 DEL CK 0245

In the Delhi High Court

Case No : Writ Petition (C) No. 1497 of 2007

Gene Pharma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F
Customs Act, 1962 — Section 129E

Citation : (2008) 229 ELT 650

Hon'ble Judges : Vikramajit Sen, J; J.P. Singh, J

Bench : Division Bench

Advocate : Joseph Vellapally and C. Hari Shankar, Pinaki Mohapatra and Jagdish N, for the Appellant; Suresh Kait, for the Respondent

Final Decision : Allowed

Judgement

1. The Petitioner has assailed the Orders of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dictated and pronounced in open Court on 27-12-2006. The Tribunal had been approached by way of an Appeal against the Order-in-Original dated 21-4-2006 passed by the Commissioner, Central Excise; the Order is a detailed one where contentions have been discussed threadbare. The Commissioner inter alias had confirmed Central Excise Duty amounting to Rs. 2,21,71,986/-; penalty of Rs. 1,10,85,993/- on each of the two partners of M/s. Gene Pharma in respect of clandestine clearances; penalty of Rs. 2,00,00,000/- on Mr. Anil Bhargava, CMD Paam Pharmaceuticals; imposition of penalty of Rs. 2,00,00,000/- on Mr. Arvind Bhargava, Director, Paam Pharmaceuticals; penalty of Rs. 50,00,000/- on proprietor Swastic Trading Company; confiscation of finished goods valued at Rs. 30,12,503/- etc. The Writ Petition has been filed by M/s. Gene Pharmaceuticals whose partners are Smt. Nisha Bhargava and Smt. Anjali Bhargava on whom the Central Excise Duty and penalties aggregating over Rs. 8,00,00,000/- have been imposed. Very recently, we had the occasion to consider all the legal complexities relating to pre-deposit orders under the Customs and Excise Act as well as Sales Tax Act in WP(C) No.

14164/2006 titled *Schneider Electric India Private Limited v. Government of NCT of Delhi* decided on 15-2-2007. After considering the plenitude of precedents including *Vijay Power Generators Ltd. v Commissioner of Sales Tax* (2000) 120 STC 377, *Shyam Kishore and others Vs. Municipal Corporation of Delhi* and another, *The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc.*, *State of Haryana Vs. M/s. Maruti Udyog Ltd. Ors.*, and *Mehsana Dist. Co-op. Milk P.U. Ltd. Vs. Union of India (UOI)*, we had noted that the right to file an appeal circumscribed by the statute which confers that privilege.

2. We had also been guided by the oft-quoted decision in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, and *Siliguri Municipality and Others Vs. Amalendu Das and Others*, AIR 1997 993 (SC) and *M/s. Upadhyay and Co. Vs. State of U.P. and Others*, in reiterating the jural principle a fiscal demand should not be lightly stayed and that the balance of convenience must clearly be in favor of making an interim order since otherwise public interest will be prejudiced. In *Oriental Manufacturing Co. Vs. The Special Director, Enforcement Directorate*, one of us (Vikramajit Sen, J.) had observed that in a number of cases it had been no that even though the Tribunal (Appellate Tribunal for Foreign Exchange) was of the view that no prima facie case or undue hardship had been made out, exemption from pre-deposit of penalty had been granted as if the Tribunal possessed the power to distribute munificence and largesse. It seems to us that we must reiterate once again that Appellate Authorities should not automatically reduce duties and penalties imposed by the Adjudicating Authorities. Wherever the quantum of pre-deposit is lesser than the assailed duty demand together with interest thereon and penalties imposed, reasons should be articulated for arriving at that figure. This is the mandate of Section 129E of the Customs Act and Section 35F of the Central Excise Act. Since this is essentially a matter resting on the discretion of the Appellate Authority, we say no more.

3. Returning to the facts of the case it has been vehemently contended by Mr. Joseph Vellapally, learned Senior Counsel for the Petitioner, that CESTAT has not fully appreciated the contentions of the Petitioner so far as merits of the case are concerned. In the course of detailed hearings before CESTAT an application came to be filed on 19-12-2006 highlighting the fact that on a perusal of the Worksheets made available to the Petitioner on the direction of the CESTAT it had become apparent that the discrepancy in duty calculation has arisen, not because of discrepancy in quantity, as the appellant suspected, but because of the rates applied by the Revenue to the various pharmaceuticals products. CESTAT has noted, as the 3rd Objection, the controversy in the "area of valuation of the goods". However, the impugned Order does not thereafter contain any discussion on this point. It is in these circumstances that Mr. Suresh Kait, learned Counsel for Union of India, has correctly conceded that the matter may be remanded for a specific finding on this aspect of the appeal. In our view CESTAT ought to have addressed this question while disposing of the application.

4. In these circumstances the Writ Petition is allowed. The impugned Order dated 27-12-2006 is set aside and the matter is remanded to the CESTAT for a fresh decision on the application of the Petitioner pertaining to pre-deposit. We need hardly add that the learned Tribunal shall be free to reduce, maintain or increase the amount of pre-deposit as it may in its discretion consider appropriate.