(1992) 04 MP CK 0017

In the Madhya Pradesh High Court

Case No : M.P. No. 749/92

H. and R. Johnson (India) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 28-04-1992

Acts Referred:
Constitution of India, 1950 — Article 14, 226, 300A

Citation : (1993) 41 ECC 283 : (1992) 61 ELT 73

Hon'ble Judges : S.D. Jha, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : D.Y. Chandrachud, for the Appellant; B.G. Neema, Standing Counsel G.O.I., for the Respondent

Final Decision : Dismissed

Judgement

1. Dr. D.Y. Chandrachud, learned counsel for the petitioner heard on admission. Shri B.G. Neema learned standing counsel of G.O.I.

2. This is a petition under Articles 226, 14 and 300A of the Constitution of India against the Union of India, Collector of Central Excise and Assistant Collector of Central Excise, Ujjain. The petitioner is engaged in the manufacture of Ceramic Glazed Wall Tiles and Floor Tiles (paving) with factories at Thane, Dewas and Kunigal in Karnataka. The first petitioner Company holds a L-4 Licence under the Central Excises and Salt Act, 1944 (hereinafter called the Act) for manufacture of the products and the Company has filed classification and price lists from time to time and has cleared the products under the appropriate tariff. The company has a bonded store-room at its factory premises at Dewas where unsold stocks of the products are stored. The store has a capacity to keep 75,000 cartons of tiles.

3. There was some dispute in the price list which resulted in the accumulation of unsold stock. The officers of the Central Excise Department inspected the bonded store house of the petitioner on 8th September 1990 and thereafter prepared Panchnamas dated 11th September, 1990 and 14th September, 1990 seized

4482 cartons of tiles as excess and also recorded as 29511 cartons as shortage. They have also worked out difference of 16671 cartons as short in production figures between private records and RG-1 Register. Thereafter a show cause notice was issued by the second respondent (Annexure-E to the petitioner). The reply was filed by the petitioner. Thereafter the second respondent passed an order dated 17th June, 1991. Aggrieved by the aforesaid order the Company preferred an appeal to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi and the appeal is pending. Along with the appeal a stay application was filed by the petitioner which has been dismissed by the order dated 17-3-1992.

4. The grievance of the petitioner is that the order is patently erroneous, suffers from non-application of mind and is without jurisdiction. The learned counsel for the petitioner Dr. Chandrachud has strenuously argued that the order challenged before the Tribunal itself is prima facie against the facts found proved by the authority itself and, therefore, the order being prima facie erroneous the Tribunal should have granted the stay in favour of the petitioner and in not doing so it has committed an illegality, because the right of appeal is a valuable right and payment.of the amount assessed as a condition to the maintainability of appeal has to be considered in the light of the merits of the case itself. The petitioner however does not state that financially the petitioner is in such a position that if the stay is not granted the appeal itself shall become infructuous.

5. In our opinion this Court cannot give a finding on the merits of the case in view of the fact that the petitioner has chosen the remedy of filing an appeal which is pending before the competent Tribunal and the decision on the merits of the case has to be given by that Tribunal. For that reason, even the prima facie case cannot be looked into, as far as merit is concerned. However, in view of what has been stated before us and in view of the annexures filed alongwith the petition we are of the opinion that the petitioner should be afforded another opportunity to file an application for stay before the Tribunal. It is, therefore, directed that if the petitioner files an application seeking stay before the Tribunal then the Tribunal shall reconsider its earlier order and pass an appropriate order in the facts and circumstances of the case.

6. With the aforesaid observation this petition is dismissed.

