(2003) 11 AHC CK 0065

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1272 of 2003

Harish Kumar Chhabra and Parveen Kumar Arora — APPELLANT

Vs

CEGAT and Commr. — RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Citation : (2004) 91 ECC 308 : (2004) 175 ELT 19

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; B.N. Singh, S.S.C. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard learned counsel for petitioner and learned counsel for respondents.

2. The petitioners have prayed for a mandamus directing the CEGAT, New Delhi to decide their appeal without insisting on any pre-deposit of the central excise duty assessed and to stay the recovery proceedings during the pendency of the appeal.

3. It appears that petitioner has filed an appeal before the CEGAT, which is pending, and the CEGAT has passed an order dated 5.10.2001 Annexure-3 to the writ petition, by which M/s. Sameer Ispat, of which petitioners claim to be Directors, was directed to make pre-deposit of Rs. 40 lakhs towards the duty liability, and Appellant No. 2 Harish Kumar Chhabra (who is petitioner No. 1 in this writ petition) was directed to deposit 5 lakhs, and Appellant No. 3 Praveen Kumar Arora (who is petitioner No. 2 in this writ petition) to deposit Rs. 50,000.00. All these deposits were to be made within twelve weeks from the date of the order dated 5.10.2001. On making these deposits the entire penalty amount of the Company and balance penalty amount of the petitioners would stand waived and recovery stayed till the disposal of the appeals.

4. The aforesaid order was passed as far back as on 5.10.2001 i.e. over two years ago. It seems that it has been deliberately not challenged specifically in this writ petition for the obvious reason that, had it been challenged we would have dismissed writ petition on the ground of laches. At any event, relief claimed in this writ petition in substance amounts to challenge to the order dt. 5.10.2001 and such challenge is highly belated as already mentioned above.

5. Moreover, on merits also we are not inclined to interfere with the impugned order. In paragraph 7 of the said order it is mentioned that the order of the Commissioner discloses that the appellant Company had indulged in clandestine receipt of the raw materials and thereafter manufacture and clearance of the final products during the period April 1995 to January 1996. All the relevant material to substantiate these allegations has been discussed in his order by the Commissioner. In paragraph 10 of its order the CEGAT has also considered the argument regarding the financial position of the Company. Grant of stay is discretionary, and we cannot interfere unless the order is wholly arbitrary. We find no arbitrariness in the impugned order.

6. This petition is dismissed on the ground of laches, and also on merits.

