

(2005) 03 GUJ CK 0009
In the Gujarat High Court

Case No : Special Civil Application No. 4229 of 2005

Heubach Colour Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Citation : (2005) 102 ECC 347 : (2005) 124 ECR 150 : (2005) 183 ELT 417

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Mihir H. Joshi and Amrita M. Thakore, for the Appellant; Jitendra Malkan, for the Respondent

Judgement

D.A. Mehta, J.—This petition is moved praying for following reliefs:

"A. Your Lordships be pleased to issue a writ of or in the nature of mandamus directing that the appeals and stay petitions filed by the petitioners against the order in original dated 30-1-2004 and received by the respondent No. 2 on 5-4-2004 be transferred/transmitted for adjudication and hearing to the Commissioner of Central Excise and Customs (Appeals), Surat.

B. Your Lordships be pleased to issue a writ of or in the nature of mandamus restraining the respondents from initiating recovery against the petitioners of the amount of duty, interest and penalty confirmed by order in original dated 30-1-2004 at Annexure A hereto till the transferred from the office of the respondent No. 2 to the Commissioner of Central Excise and Customs (Appeals), Surat and the stay applications are heard and decided by the Commissioner (Appeals), Surat.

C. Pending the admission, hearing and final disposal of the present petition, Your Lordships be pleased to restrain the respondents from initiating recovery against the petitioners of the amount of duty, interest and penalty confirmed by order in original dated 30-1-2004 at Annexure A hereto."

2. It appears that, by order in original dated 30th July 2004, respondent No. 3 imposed duty liability of Rs. 38,77,427/- on Furnace Oil and Rs. 9,19,470/- on Light Diesel Oil along with interest and also imposed a penalty of Rs. 47,96,897/- on petitioner No. 1 Company, and a penalty of Rs. 4,00,000/- on petitioner No. 2. It is the case of the petitioner that, on 5th April 2004, two separate appeals were preferred against the said order in original accompanied by an application seeking stay of demand. That since 22nd July 2004, respondent No. 4 has been pressing the petitioner to discharge its duty liability stating that no stay has been granted and hence, the Department is entitled to effect recovery. The case of the petitioner is that it is only sometime in March 2005 that the petitioner came to know that the appeal had not been lodged with the office of the Commissioner (Appeals), but the Commissioner i.e. respondent No. 2, who for the sake of convenience may be referred as Commissioner (Administration). In the circumstances, the petitioner has already addressed a communication to respondent No. 2 to transfer the appeals and the applications seeking stay of demand to the Commissioner (Appeals) and in the meantime, it is prayed that the respondent authorities be prevented from effecting any coercive recovery.

3. Heard Mr. Mihir H. Joshi, the learned Senior Advocate appearing with Ms. A.M. Thakore for the petitioner and Mr. Malkan appearing on behalf of the respondents on receipt of advance copy.

4. It is accepted by Mr. Malkan that the prayer seeking direction to transfer the appeals and stay applications from the office of respondent No. 2 to office of Commissioner (Appeals) can be granted and the respondents could have no objection to the same.

5. In these circumstances, prayer at paragraph No. 20-A is granted and respondent No. 2 is directed to transfer the appeals and the stay applications which were filed in his office on 5th April 2004 to the office of Commissioner (Appeals) within a period of seven days from today, or latest by 25th March 2005.

5.1 In relation to the other prayer seeking direction to restrain the respondents from initiating recovery of demand raised, the learned counsel for the petitioner seeks permission not to press the same, under instructions, so as to enable the petitioner to move the Commissioner (Appeals) to pass an appropriate order on the stay applications at the earliest. In these circumstances, it is not necessary to deal with any other issue.

5.2 The petition accordingly stands disposed of with the aforesaid directions.

6. Needless to state, in case the petitioner moves an appropriate application before the Commissioner (Appeals) seeking priority in hearing of stay applications, such an application will be dealt with by the said authority in accordance with law.

Direct service is permitted.