
(1996) 09 MAD CK 0111

In the Madras High Court

Case No : Writ Petition Nos.11076 of 1996 and W.M.P. No.14805 of 1996

Hindlever Chemicals Limited

APPELLANT

Vs

Cegat, Madras

RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35B, 35F

Citation : (1996) 88 ELT 346

Hon'ble Judges : S.M. Ali Mohammed, J

Bench : Single Bench

Advocate : Shri Arvind P. Datar, for the Appellant; Shri K. Jayachandran, Addl. C.G.S.C., for the Respondent

Judgement

S.M. Ali Mohammed, J.

1. By consent of the parties, the main writ petition itself is taken up for final hearing.

2. The prayer of the petitioner is to issue a writ of certiorarified mandamus, to call for the records of the case and quash S/Order No.193/96, dated 3-7-1996 passed by the first respondent herein and further direct the first respondent to re-hear the stay applications filed by the respondent herein on merits and pass such further or other order as may be deemed fit and necessary in the facts and circumstances of the case.

3. A Director of the petitioner-company in his affidavit filed in support of the writ petition states as follows :-

"... the Commissioner of Central Excise, Belgaum, by order dated 13-3-1996 held that the petitioner was not entitled to Modvat credit as LABSA had not been declared as an input by the petitioner. Accordingly, the total demand of Rs. 1,55,77,740/- was directed to be paid forthwith by the petitioner. Against this order, the petitioner preferred an appeal u/s 35B of the Central Excise and Salt Act, 1944 to the first respondent herein. Stay applications u/s 35F for waiver of

pre-deposit were also filed. The said stay applications were posted for hearing on 28-6-1996. The petitioner had appointed Mr. Ashok Gupta, the Law Officer of the company, as its duly constituted attorney to appear in the matter. The said Mr. Ashok Gupta was indisposed on account of severe lower back pain on 28-6-1996. Therefore, by application dated 28-6-1996, the petitioner sought an adjournment of the proceedings from the first respondent and the first respondent was pleased to grant an adjournment and post the matter for hearing on 3-7-1996. However, Mr. Ashok Gupta did not recover from his ailment by that date. Therefore, the petitioner filed another application dated 2-7-1996 in the said stay applications seeking a further adjournment of the hearing and requested that the case may be posted on 5-7-1996 or any other dated convenient to the Hon'ble Tribunal. A medical certificate from Dr. T. Rajagopal, Chief Medical Officer of the petitioner was enclosed with the application for adjournment stating that Mr. Ashok Gupta required further rest till 5-7-1996 to recover from his acute lower back ache problem. In spite of the filing of the application for adjournment with the medical certificate, the first respondent herein refused to adjourn the case on 3-7-1996. Instead, the first respondent proceeded to decide the matter on merits and dismissed the stay application by stating that the petitioner has not provided any evidence that LABSA is the same Sulphonic Acid. The first respondent has directed the petitioner to make a pre-deposit of the entire duty demanded by the department, viz., a sum of Rs. 1,55,77,740/- forthwith."

4. Aggrieved by the same, the petitioner has filed the above writ petition with the reliefs as prayed for. It is contended by Mr. Arvind P. Datar, learned counsel for the first respondent-Customs, Excise and Gold (Control) Appellate Tribunal ought to have adjourned the proceedings so that the petitioner may effectively place the case of the petitioner to bring about the case of the petitioner within the four corners of the proviso to Section 35F of the Central Excises and Salt Act, 1944. Though the first respondent-Tribunal has itself considered one aspect of the matter, viz., prima facie case, no opportunity was given to the petitioner-company. Even with regard to the prima facie case, the petitioner will be in a position to satisfy the Tribunal. That apart, the deposit of a huge amount of Rs. 1,55,77,740/- demanded in terms of the impugned order which was the subject matter before the Tribunal itself is an indication of undue hardship to the petitioner even though the petitioner-company is a reputed company. On the other hand, the learned Additional Central Government Standing Counsel, Mr. A. Jayachandran submits that there is no infirmity in the impugned order.

5. I have considered the contentions of the learned counsel for the petitioner and the respondent. Upon the peculiar facts and circumstances of the case, I feel that the ends of justice will be served, if an opportunity is given to the petitioner-company to place its case before Customs, Excise and Gold (Control) Appellate Tribunal to bring it within the purview of the proviso to Section 35F of the Central Excise and Salt Act, 1944, so that the Tribunal may exercise its discretion, in accordance with law. In view of the above, the impugned order is quashed and set aside. The first respondent is directed to give a fresh hearing to the

petitioner-company, within a period of four weeks from the date of receipt of the copy of the order and pass orders on merits and in accordance with law. No costs. Consequently, no order is necessary in W.M.P. No.14805 of 1996.