

(1985) 04 CAL CK 0043
In the Calcutta High Court

In Re : American Refrigeration Co. Ltd.

Date of Decision : 04-04-1985

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1986) 23 ELT 74

Hon'ble Judges : B.P. Banerjee, J

Bench : Single Bench

Advocate : R.N. Bajoria, Rupan Mitra and J.P. Khaitan, for the Appellant; S.N. Banerjee and Tobarek Ali, for the Respondent

Judgement

B.P. Banerjee, J.—The matter was moved with notice and the learned Advocates for the parties agree that the matter may be disposed of without formally issuing any Rule.

2. In this case the petitioner filed an appeal and also filed an application for exemption from making payment of the amount of duty demanded pending disposal of the appeal which are required to be deposited u/s 35F of the Central Excises and Salt Act, 1944 before the Tribunal. The petitioner made out a case that there was accumulated loss of Rs. 65.64 lakhs as on April 30, 1984 and as a result thereof there was great hardship for which the petitioner should be granted exemption from making the said payment during the pendency of the Appeal. It was further pointed out before the Tribunal that in terms of the Order passed by this Court a sum of Rs. 8 lakhs is refundable by the Department and that the petitioner was ready to give an undertaking that the petitioner would not withdraw the said amount pending disposal of the appeal if such exemption is allowed. The Tribunal also refused to go into the merits of the case. The learned advocate for the petitioner contended that the Tribunal ought to have considered the prima facie case made out by the petitioner, in order to satisfy about the bona fide of the case made out by the petitioner and the Tribunal may not exercise such power if prima facie there was no case made out in the appeal. Secondly, the Tribunal refused to take into consideration about the money lying in the hands of the Department which is refundable to the petitioner in terms of

the order of this Court. That is a relevant factor because out of 10 lakhs payable by the petitioner as a condition precedent for entertaining the appeal about 8 lakhs are lying in the bands of the Department. It appears that there are errors of law apparent on the face of the order of the Tribunal inasmuch as the Tribunal rejected the application without taking into consideration the relevant facts and circumstances of the case including the fact that a sum of Rupees 8 lakhs were lying in the Department which is refundable to the petitioner and admittedly from the profit and loss account the company was suffering huge loss and that the petitioner made out a case where the Tribunal should have exercised its discretion in favour of the petitioner in granting exemption on condition of giving undertaking by the petitioner will not to take the refund of the said money. That is also another factor by which the revenue of the respondents could have been secured better. It is a case where the Tribunal has proceeded in the matter mechanically and on technical ground. The Tribunal in granting exemption is bound to take into consideration the prima facie case made out by the petitioner as also the interests of the revenue which is substantially secured by the offer made out by the petitioner that the amount of Rupees eight lakhs refundable to the petitioner by the Department the petitioner undertakes not to withdraw the said amount.

3. Considering the facts and circumstances of the case it appears that the order of Tribunal is not correct. Accordingly, I set aside the order of the Tribunal and direct the Tribunal to reconsider the said application in accordance with law and in the light of the observations made above within a period of six weeks from today. I also direct to deal and dispose of the Appeal itself as expeditiously as practicable but not later than three months from this date. Until the said application is disposed there shall be stay of the realisation of the demand in question.

4. Let a plain copy of this order countersigned by the Assistant Registrar (Court) be given to the learned Counsel for the petitioner.