(1986) 01 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 4529 of 1985

Indotex Machinery Works APPELLANT

Vs

Assistant Collector of Central Excise and Others RESPONDENT

Date of Decision : 21-01-1986

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1986) 9 ECC 296 : (1986) 9 ECR 698

Hon'ble Judges : B.S. Kapadia, J;B.K. Mehta, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; S.D. Shah, for the Respondent

Judgement

Mehta, J.—The petitioner-firm has moved this court for appropriate writs, orders and directions for quashing and setting aside the impugned orders dated March 4, 1985 and July 15, 1985 passed by the third respondent-tribunal and for direction to the tribunal to dispense with the deposit of the excise duty of Rs. 2,02,116.49 Ps. during the pendency of the appeal.

2. The question involved in this petition is whether the value of the articles purchased and supplied by the petitioner to its customers along with other machinery parts manufactured by the petitioner should or should not be included in the value of products sold for purposes of the excise duty under tariff item 68 of the First Schedule to the Central Excises and Salt Act, 1944 as no processing or manufacturing activity, not even assembling, was done by the petitioner on such bought out articles and they were supplied to the customers in the same form in which they were purchased by the petitioner, and therefore, did not become liable to pay any excise duty as the petitioner was entitled to the benefit of exemption under notification No. 105/80 dated June 19, 1980. The contention of the petitioner that they were not liable to pay duty on such articles did not find favour with the Collector of Central Excise, Ahmedabad, who by his order of September 25/October, 1984 rejected the said contention and held that the value of the bought out articles was also liable to be included for ascertaining the value

of the goods excisable under tariff item 68. The petitioner, therefore, carried the matter in appeal before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi and moved the tribunal for interim relief that pending the hearing and final disposal of the appeal by the tribunal, the recovery of the excise duty be stayed.

3. One of the main grounds urged in support of the interim relief was that the Special Bench "C" of the Appellate Tribunal held that the value of such articles could not be included for purposes of working out the amount of excise duty under tariff item 68. The petitioner emphasised that it was a small scale unit with limited resources and that it was beyond the means of the petitioner either to offer cash security or bank guarantee for such a huge amount of duty involved, and in case the recovery is enforced, the business of the petitioner-firm would come to a standstill. The tribunal could not persuade itself to grant the interim relief since the representative of the petitioner did not dispute that the petitioner-firm has made a sizable profit in the last two preceding years and, therefore, the payment of duty could not cause any undue hardships to the petitioner firm. The petitioner, therefore, moved a fresh application for review of the earlier order of the tribunal refusing to grant stay of the order dated March 4, 1985 setting out in detail in financial circumstances of the petitioner-firm that the payment of duty as insisted upon would cause grave hardships to it and the right of appeal would be for all practical purposes lost. The tribunal rejected this application by its order of July 15, 1985 on the short ground that these points ought to have been placed and pressed at the time of hearing of the earlier application. It is in these circumstances that the petitioner-firm have moved this court for writs, orders and directions as stated hereinabove.

4. Having heard the learned Advocates for the parties, we are of the opinion that if the following directions are given in the matter, it will not only serve the ends of justice but will also save public time and costs since the order refusing to grant the interim relief would not operate as res judicata as to prevent a party seeking to place necessary material for justification of the interim relief prayed for and refused once. It is in these circumstances that we are giving the directions :

1. The petitioner firm shall deposit Rs. 25,000 with the Assistant Collector, Central Excise, Division III, Ahmedabad within two weeks from to-day towards the demand raised.

2. The petitioner-firm shall give an undertaking of one of its partners to this court that the petitioner-firm shall not transfer its factory without the permission of this court till final hearing and disposal of the appeal. Such an undertaking to be given within three weeks from to-day.

3. The tribunal shall hear and dispose of finally the main appeal on merits preferred by the petitioner-firm as early as possible but in any case not later than 30th April, 1986.

5. In view of the directions aforesaid, nothing will remain for effective adjudication and the petition shall stand disposed of accordingly for which we shall have to issue rule in this matter which we hereby do. Mr. S.D. Shah appears for the respondents and waives service of the rule. Rule is made absolute accordingly with no order as to costs.