(2009) 03 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 2642 of 2009

J and J Plast APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : (2010) 258 ELT 341

Hon'ble Judges : S.R. Brahmbhatt, J;D.A. Mehta, J

Bench : Division Bench

Advocate : D.K. Trivedi, for the Appellant; Harin P. Raval and Darshan M. Parikh, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—This petition has been preferred with following prayers:

(A) That Your Lordship may be pleased to admit this petition.

(B) That Your Lordship may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order preventing the Respondent No. 2 from taking the said illegal, incorrect and unjust action against the Petitioners, as the same is ultra-virus Articles 14 and 19(1)(g) of the Constitution of India. That Your Lordship may be pleased to issue a writ of Mandamus or any other appropriate writ, direction or order, preventing the action of Respondent No. 2 of taking coercive measures and pressing recovery viz. a viz. attaching the machinery of the Petitioners, since the same is ultra virus Articles 14, 19(1)(g) of the Constitution of India. Pending hearing and final disposal of the present petition, Your Lordships may be pleased to stay the implementation, operation and execution of recovery action initiated by the Central Excise Authorities. Your Lordship may also be pleased to pass/issue an order in favour of the Petitioner by ordering the Respondents to refrain from taking any action against the Petitioners.

(C) That any other further relief that may be deemed fit in the facts and circumstances of the case may be also please be granted.

2. Order-in-original dated 29-8-2008 was made against the Petitioners raising demand of Rs. 43,81,131/- towards duty of Central Excise under the Central Excise Act, 1944 (the Act). The order also records that a sum of Rs. 4 lacs paid under protest has been adjusted against the said demand. Order-in-original also levies various penalties and redemption fine and charges interest under relevant provisions of the Act. The Petitioners went in Appeal before Commissioner (Appeals) but failed. The order dated 25-2-2009 made by Commissioner (Appeals) has been served on the Petitioners on 7-3-2009, as per say of the Petitioners. Thereafter Respondent authority has initiated proceedings for recovery of outstanding dues vide communication dated 18-3-2009.

3. Learned Counsel for the Petitioners submits that the Petitioners are statutorily entitled to prefer an appeal before the Tribunal within a period of 90 days from the receipt of the appellate order and such an appeal shall be accompanied by an application seeking stay against the recovery. That till the point of time such an appeal and stay application are filed before the Tribunal, Respondent authority must be directed to stay its hands from recovering the outstanding dues. It is submitted that Respondent authority has orally threatened to attach the factory, plant and machinery and other assets of the Petitioners which will result in closing down the unit of the Petitioners. The learned Counsel in this context placed reliance on Circular No. 788/21/2004-CX., dated 25-5-2004 as reported in 2004 (91) ECC 99

4. It is not possible to accept the contentions raised by the Petitioners. The Circular in question on which reliance has been placed is in relation to stay of recovery qua first stage appeals, and the reference to Tribunal in the said circular is in context of an order in original made by Commissioner against whose order a direct appeal lies to the Tribunal. It is not possible to read a sentence of the Circular out of context as the Petitioners desire.

5. Even otherwise there is no question of interfering in recovery proceedings without entering into the merits of the controversy as the same would amount to determining the merits of the controversy even without going into the merits of the matter.

6. The petition is accordingly rejected summarily.

