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(2014) 07 AHC CK 0253

In the Allahabad High Court

Case No : Writ Tax No. 370 of 2014

Jai Jagdamba Molleables Pvt. Ltd.	APPELLANT
Vs	
Commr. of Cus. and Central Excise	RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : (2014) 310 ELT 489

Hon'ble Judges : Dhananjaya Yeshwant Chandrachud, C.J;Dilip Gupta, J

Bench : Division Bench

Advocate : Ashok Kumar and Praveen Kumar, Advocate for the Appellant; Amit Mahajan, Advocate for the Respondent

Judgement

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1. Certain term loans were sanctioned to a borrower by the name of Hans Pharmaceutical and Chemical Pvt. Ltd. by PICUP and UPFC. The borrower having defaulted, actions were taken under Section 29 of the State Financial Corporation Act, 1950. On 21 November 1994, the petitioner purchased the assets of the borrower from PICUP. On 24 August 2004, the petitioner was called upon by the Central Excise Department to deposit the excise dues of the erstwhile borrower in the amount of Rs. 21,97,506/-. The petitioner had challenged the demand before the Lucknow Bench of this Court and was directed in the proceedings to deposit an amount of Rs. 10,00,000/-. Subsequently the petition was dismissed on 23 November 2010 in view of the alternative remedy of filing an appeal. The appeal was dismissed by the Commissioner (Appeals) on 31 August 2012. The petitioner has filed an appeal before the CESTAT which is pending. In the appeal, by an order, dated 18 January 2013, the Tribunal dispensed with the requirement of pre-deposit on the ground that the petitioner has already deposited an amount of Rs. 10,00,000 as against the duty demand of approximate to Rs. 21 lacs. In the meantime, on 29 May 2012 an order of attachment was levied by the Assistant Commissioner, Central Excise Division, Jhansi. The grievance of the petitioner is that as a result of the order of attachment, it is not able to utilise

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the Unit and hence the attachment should be lifted. The records before the Court would indicate that the order of attachment was passed on 29 May 2012 by the Assistant Commissioner. Subsequently, the Tribunal has taken note of the fact that the petitioner has already deposited an amount of Rs. 10,00,000/- as against a total demand of Rs. 21.97 lacs and has granted, on that basis, a dispensation of the balance of the deposit.

2. In this view of the matter, we find merit in the contention of the petitioner that in view of the order passed by the Tribunal, the attachment cannot be allowed to continue and ought to be lifted. Once the Tribunal has granted a stay on the recovery of the balance of the duty, the attachment of the properties which is a step in aid of the realisation of duty cannot be allowed to stand. In the circumstances, we allow the petition and set aside the impugned order of the Assistant Commissioner, dated 29 May 2012 (Annexure 7). There shall be no order as to costs.

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