(1999) 03 CAL CK 0015

In the Calcutta High Court

Case No : Writ Petition No. 423 of 1999

J.K. Corpn. Ltd. APPELLANT

Vs

Commr. of C. and Designated Authority, KVSS, 1998 RESPONDENT

Date of Decision : 01-03-1999

Acts Referred:
Finance (No. 2) Act, 1998 — Section 87, 88, 90(1), 90(2), 95

Citation : (1999) 65 ECC 386 : (1999) 111 ELT 698

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Judgement

Ajoy Nath Ray, J.—The writ petitioner imported certain machinery from Germany with commitments for submitting installation certificates and for keeping to certain export commitments for five subsequent years.

2. The import was made in or about 1995.

3. The machinery did not work as expected and at least with regard to initial years there were export defaults! On or about 31-3-1998, the Assistant Commissioner of Customs, Appraising Grade 5A issued a demand from Customs House, Calcutta calling upon Mr. Gupta''s client to pay the full duty saved amount of Rs, 3,22,01,357.00.

4. Thereafter the Finance No. 2 Act, 1998 came into operation, and the Kar Vivad Samadhan Scheme was resorted to by the writ petitioner. They filed the necessary declaration u/s 88 of the said Act.

5. Bank guarantees covering 50% of the said duty were also in operation.

6. An earlier writ was moved before me regarding restraining of the enforcement of these bank guarantees, but I dismissed the writ as 50% of the amount would in any event be payable. ;

7. In the present Writ application the writ petitioner seeks this relief that it be permitted to pay to the designated authority 50% of the duty demanded, and

that before the expiry of the present months so that in case the writ ultimately succeeds, such payment might be treated for all purposes as a payment on all fours with one made u/s 90 sub-section (2) of the said Act. Such a payment would relieve the writ petitioner from further liability.

8. The authorities have not accepted the payment of the 50% as according to them it appears that the departmental view currently is that the case of the writ petitioner does not fall within the ambit of the Samadhan Scheme.

9. If the demand made on 31-3-1998 is to be construed as a demand within the meaning of Section 95(ii)(b) as well as Section 87(m)(ii)(b), then and in that event the declaration for the Samadhan would have been well-filed.

10. It is true that the demand of 31-3-1998 was issued more perhaps as a precursor to a show cause notice than as a succeeding step to a final adjudication, yet in some sense a demand it was. Whether that demand is a demand within the meaning of the Act and its provision mentioned above, is a matter which will fall to be determined at the final hearing of this Writ.

11. Even if the; writ is ultimately won but the-payment of 50% is not made within time, it will be a fruitless victory. On the other hand if the 50% amount is paid and the respondents are compelled by order of Court to accept it, then, even if the writ is ultimately lost, the arms of the Writ Court are long enough to adjust the matters so that an adjudication for the balance amount, if any payable, might be put afoot after the disposal of the Writ.

12. Mr. Mitter appearing for the respondents opposed the grant of an interim order. He submitted that without a Section 90(1) adjudication by the designated authority payment cannot be made. Such a payment can be accepted only upon adjudication and not without it.

13. For the purpose of the interim order it is to be taken as held and ordered that the Court has power to substitute its own interim order as a provisional adjudication u/s 90(1) even if the designated authority has not pronounced to that effect.

14. The order to be passed herein and the observations above are prima facie and without prejudice. Rule as prayed for. Returnable 16 weeks hence. Notwithstanding the pendency of the Rule Mr. Gupta''s clients will be at liberty to pay to the respondent no. 1 within and before the expiry of the current month a sum of Rs. 1,61,00,679/- and when the said sum is tendered by way of cheque, pay order or otherwise, the respondent no. 1 shall accept and appropriate that amount without raising any demur or protest. Payment and acceptance shall both be without prejudice and the effect thereof shall abide by the result of the writ. The present order shall be treated as postulating the passing of an appropriate order under sub-section (1) of Section 90 by the designated authority raising a demand for the said sum of Rs. 1,61,00,679/-, passed as on date and the payment by Mr. Gupta''s client will be treated as payment u/s 90(2); all these

will be either affirmed or modified depending on whether the writ is ultimately won or lost.

15. Upon payment as aforesaid the impugned order dated 10-2-1999 shall remain stayed and the bank guarantees shall also thereupon lapse.

16. In case the payment as aforesaid is not tendered by Mr. Gupta''s clients, the respondent no. 1, the writ application shall stand summarily rejected, and the interim orders also shall in that event be automatically vacated.

17. Parties and all others concerned to act on an authenticated copy of the Dictated Order on usual undertakings as to completion of the order and drawing up and issuance of the Rule.