(1985) 07 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 1186 of 1985

Johnson and Johnson Limited APPELLANT

Vs

Collector of Central Excise and Others RESPONDENT

Date of Decision : 09-07-1985

Acts Referred:

Citation : (1989) 20 ECR 387

Hon'ble Judges : Pendse, J

Bench : Single Bench

Judgement

Pendse, J.—Heard Shri Desai for the petitioners and Shri Sethna for the respondents.

2. It is not necessary to entertain this petition in view of the fact that the petitioners have already filed an appeal against the order passed by the Assistant Collector, Central Excise, and the appeal is pending before the Collector of Central Excise (Appeals). The petitioners were aggrieved by the action of the respondents in proceeding to recover a large amount of Rs. 1,82,20,194.56 in pursuance of the order which is under appeal. It is obvious and Shri Sethna does not dispute that fact that the recovery is made in pursuance of the order which is under appeal. It is not necessary to entertain the petition at this juncture because it is open for the petitioners to approach the appellate authority and apply for stay of the enforcement of the order under appeal and consequently of the order of recovery of the large amount. In case, the petitioners have not filed the application for stay till today, then such stay application should be filed within a period of one week from today. On such stay application being filed, the appellate authority should try to dispose it of, as far as possible, within a period of four weeks from the date of presentation of the application.

3. Shri Desai submits that pending the disposal of the stay application, it is necessary to grant relief to the petitioners as the respondents have already attached goods which are medicinal items and of a value of approximately Rs. 67,00,000/-. Shri Desai submits that in case goods are not released, it would

cause serious hardships and consequences not only to the petitioners but also to the hospitals. In these circumstances, in my judgment, the fair order to pass would be to direct the respondents to release these goods forthwith on the undertaking of the petitioners to furnish Bank guarantee of a Nationalised Bank of the value of Rs. 67,00,000/- in favour of the Collector of Central Excise. The petitioners through their counsel Shri Desai gives an undertaking to furnish the requisite Bank guarantee within a period of one week from today. Undertaking accepted. In view of the undertaking, the respondents are directed to release the goods attached on June 24, 1985. The amount covered by the Bank guarantee would be available to the respondents, in case the appellate authority declines to grant stay of the order or of the consequential recovery. The Bank guarantee not to be enforced by respondents for a period of two weeks from the date of disposal of stay application.

As regards the balance amount out of threatened recovery of Rs. 1,82,20,194.56, Shri Desai apprehends that the respondents may take action and attach further goods. 1 had earlier passed an ad-interim order restraining the respondents from taking any further steps for recovery of the balance amount. Shri Desai submits that the respondents should be restrained from recovering this balance amount pending the stay application. The submission made by Shri Desai is fair and the relief can be granted as the stay application is to be decided within a period of four weeks from the date of the presentation of the application. Accordingly, the respondents are directed not to recover balance amount or to take any steps in that respect till the disposal of the stay application by the appellate authority and two weeks thereafter.

4. As regards the clearance of the goods, it is made clear that the respondents should permit the petitioners to clear the goods on the basis that they are classifiable under Tariff item No, 68 and are exempt from the duty under Notification 62/78. This relief is granted to the petitioner only till the disposal of the stay application and two weeks thereafter but on condition that the petitioners would furnish Bank guarantee in favour of the Collector of Central Excise for the difference in the duty payable under Tariff Item 68 and under Tariff Item 14-E as held by the order under challenge before the appellate authority.

5. It is made clear that the directions in this order are given only to facilitate the petitioners to clear the goods and run their factory and the direction should not be construed in any manner as determining the right of the petitioners or the claim of the petitioners raised in the petition. The appellate authority is at liberty to dispose of the stay application on merits after hearing both the sides.

6. At this stage, Shri Desai submits that the petitioners should be permitted to furnish Bank guarantee of Hongkong & Shanghai Bank where the petitioners have account instead of Nationalised Bank. It is open for the petitioners to furnish Bank guarantee of this Bank only instead of Nationalised Bank.

7. In view of this direction as mentioned hereinabove, the petition is not required

to be entertained and petition is allowed to be withdrawn on application of Shri Desai for the petitioners.

