(1992) 11 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 9714 of 1990

K.C. Palanisamy and Company APPELLANT

Vs

Assistant Collector of Central Excise RESPONDENT

Date of Decision : 04-11-1992

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A

Citation : (1993) 42 ECC 316 : (1993) 63 ELT 55

Hon'ble Judges : R.R. Mishra, J

Bench : Single Bench

Advocate : Shri N. Inbarajan, for the Appellant; Shri K. Jayachandran, ACGSC, for the Respondent

Judgement

R.R. Mishra, J.

1. Heard learned counsel for the parties. Since I propose to remit the case for disposal in accordance with law, I only state what I feel is relevant

for the purpose of the question that I am required to determine. Petitioner herein preferred appeal against a demand of revenue of Rupees Eight

Lakhs and odd by the Assistant Collector of Central Excise, duly confirmed in appeal Tribunal, South Regional Bench at Madras, they also made

an application for waiver of pre-deposit of duty. The Tribunal has, on the application for waiver, said as follows :

We have carefully considered the submissions made before us. The question as to whether the goods are liable to duty or not and would be

covered by the exemption notification under the new Tariff with effect from 1-3-1988 would be a matter that would call for deeper examination of

the issue with reference to the records and other relevant materials, not permissible at this stage. We do not, prima facie find any infirmity in the impugned order because the adjudicating authority has purported to have reviewed the order of classification in terms of Section 11A by exercise

of the limited power of review granted by the Statute. Taking into consideration the fact that the petitioner''s classification list had been earlier

approved and subsequent clarification by the Superintendent of Central Excise was also issued that the petitioner would not be liable to pay duty

on the goods in question, we direct the petitioner to make a pre-deposit of a sum of Rs. 4,00,000/- (Rupees four lakhs) on or before July 31st,

1990 and report compliance, subject to which pre-deposit of the balance of duty would stand dispensed with, pending appeal.

2. While it may be said without any fear of contradiction that the Appellate Authority or Tribunal has got the discretion to reject any petition to

dispense with the condition of pre-deposit of the revenue demanded, since the provisions, as found in proviso to Section 32F of the Central

Excises and Salt Act, 1944, permit dispensing with any such deposit. The Appellate Authority or the Tribunal may, in appropriate cases, order

dispensing with the pre-deposit of the duty demanded. The order can be made only on condition that the appellant is able to show that the pre-

deposit of duty demanded or penalty levied pending appeal would cause undue hardship to him and while granting any order in this behalf, the

interests of revenue are safeguarded. The order above quoted shows on the one hand that there is a good prima facie case in favour of the

petitioner, on the other hand there is nothing to show that he should be asked to deposit Rupees Four Lakhs. In other words, the Tribunal has said

nothing about the undue hardship or the interests of revenue. The orders, in my opinion, require interference for the limited purpose that the matter

is remitted to the Appellate Tribunal for affording opportunity to the petitioner to show to the Tribunal how it shall suffer undue hardship if the duty

demanded or part thereof is asked to be deposited as a pre-condition of the demanded or part thereof is asked to be deposited as a pre-condition

of the appeal and make suitable orders in accordance with law. In the result, the Writ Petition is allowed; the case is remitted to the Tribunal for a

re-hearing and disposal of the question whether there should be any order dispensing with the condition of pre-deposit of the duty demanded. The

petitioner accordingly is directed to appear before the Tribunal within ten days from today, on which date the Tribunal shall either fix a date of hearing or make suitable orders after hearing the petitioner. No costs.