(2003) 02 BOM CK 0150

In the Bombay High Court

Case No : Writ Petition No. 3326 of 1989

Keshub Mahindra APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 154 ELT 562

Hon'ble Judges : S. Radhakrishnan, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : C.M. Korde and M. Jadhav, instructed by Little and Co, for the Appellant; K.R. Bulchandani and R.V. Desai, for the Respondent

Judgement

J.P. Devadhar, J.—In this case although the petition was filed as far back as on 23rd November, 1989, the Respondents have not chosen to file any affidavit in reply till date. When the matter came up for hearing on 20th January, 2003, Counsel for Respondents sought time with a view to file an affidavit in reply to the petition. In the interest of justice, the request was acceded to and the petition was adjourned. However, even today when the petition is taken up for final hearing, the Respondents have not tendered any affidavit in reply to the petition.

2. However, Mr. Chaudhary, learned Counsel appearing on behalf of the Respondents submitted that in the instant case the Petitioners have challenged the show cause notice which is yet to be adjudicated and, therefore, the Respondents must be permitted to adjudicate the matter in accordance with law and no interference is called for in its writ jurisdiction. Ordinarily, we would not have taken the onerous responsibility of adjudicating the show cause notice which is yet to be adjudicated, however, in view of the events subsequent to the filing of the petition, the show cause notices impugned in the petition have become infructuous and in this view of the matter, we have decided to dispose of the matter on merits instead of remanding the matter back to the adjudicating

authorities for adjudication of the show cause notices. The Original Petitioner Nos. 2 to 5 have died during the pendency of the petition and accordingly their names have been deleted.

3. In this petition, the Petitioners have challenged to show cause notice dated 14th September, 1989 (Exhibit ''E'' to the petition) and show cause notice dated 26/28th September, 1989 (Exhibit ''F'' to the petition).

4. Shri Korde, learned Senior Counsel appearing on behalf of the petitioner submitted that as regards the first show cause notice dated 14th September, 1989 is concerned, the same was issued against the company as well as 8 other executives of the company including the petitioner. Mr. B.R. Sule and 3 other executives had filed Writ Petition No. 3327 of 1989 challenging the very same show cause notice dated 14th September, 1989 and by a judgment and order dated 9th February, 1990 reported in B.R. Sule Vs. Union of India, this court had quashed and set aside the show cause notice qua the Petitioner therein, and Counsel for the Petitioner submitted that the said decision has become final. There is no denial from the revenue on this aspect. No case is made out for distinguishing the case of the petitioners with that of Mr. Sule and other Directors. In this view of the matter, we see no reason to permit the Respondents to adjudicate the show cause notice qua the Petitioner No. 1. Accordingly we hold that the issues raised in the show cause notice dated 14th September, 1989 being covered by the decision of this Court in the case of B.R, Sule (supra) the show cause notice dated 14th September, 1989 qua the Petitioner No. 1 is quashed and set aside.

5. As regards the second show cause notice dated 26/28th September, 1989 is concerned, Counsel for the Petitioners brought to our notice that the said show cause notice was issued against several executives of the company including the Petitioners, as well as the company. The said show cause notice against the company was adjudicated upon by the Collector of Central Excise and by an order dated 9th April, 1990, the Collector had upheld the duty liability on the company and categorically held that imposition of penalty is not called for on any of the functionary of the company. However, the Collector levied penalty of Rs. 2 lakhs on the company. On an appeal by the company, the said penalty was reduced to Rs. 50,000/- by CEGAT and the same has been paid by the company. In this view of the matter and especially when there is no material with regard to personal involvement of the Petitioner No. 1 we see no reason to sustain the second show cause notice dated 26/28th September, 1989 against the Petitioner No. 1.

6. Accordingly, both the show cause notices are quashed and set aside qua the Petitioner No. 1 and Rule is made absolute in terms of prayer Clause (a) of the petition, with no order as to costs.

7. Parties to act on a true copy of this order duly authenticated by the Court Associate.

