

(1998) 06 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 801 of 1998

K.K. Fabrics

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-06-1998

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1999) 65 ECC 384 : (1999) 83 ECR 225 : (1999) 111 ELT 697

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : Sekharbhargava and Laad, for the Appellant; B.G. Neema, Counsel, for the Respondent

Judgement

Deepak Varma, J.—This order shall also covers disposal of W.P. No. 808 of 1998 (Swastik Industrial Textiles v. Union of India), W.P. No. 809 of 1998 (Ruchi Fabrics Ltd. v. Union of India) and W.P. No. 829 of 1998 (Bidasaria Brothers v. Union of India) as common questions are involved in these petitions.

2. It may be mentioned here that earlier also petitioners were required to approach this Court for grant of certain reliefs to them. The earlier petitions have been disposed of and copies of the said orders passed by High Court from time to time have been annexed in the petition. Petitioners' grievance is that as per the directions given by the High Court, Commissioner (Appeals) was required to hear the petitioners appeal on merits; instead orders on petitioners' application filed u/s 35F of the Central Excise Act has been passed and a direction has been given to deposit the amount of duty. All these orders have been annexed as Annexure P-I to the petition.

3. Petitioners submitted that on the date of the arguments were heard they were given to understand that matters would be disposed of on merits. They had, accordingly, submitted written arguments on merits of the matter which is manifest from Annexure P-12. They have also filed copy of the order passed by the D.B. of Delhi High Court in the matter of M/s. Jyoti Overseas Ltd. The

contention of the learned counsel for the petitioners is that in view of the categorical order passed by this Court, the appeal alone could have been heard on merits without there being any demand made in this regard while considering the application u/s 35F of the Act. My attention has also been drawn to the order dated 4-3-1997 passed in W.P.No. 224 of (sic) while disposing of the said petition in Condition No. (3) it has categorically been mentioned by this Court that pending the disposal of appeal, the respondents shall not proceed with the recovery of arrears. However, despite this order the petitioners have been directed to deposit the amount of duty, failing which their appeals would stand dismissed find rejected

4. I have heard the learned counsel for parties and perused the record. Shri Neema appearing for respondents on Advance copy submitted that the Commissioner (Appeals) is overburdened with number of appeals that are pending before him and, therefore, it is not possible for him to take up this appeal and the connected appeals at an early date. According to his estimate the Authority concerned would take about 2 months time to-day to take up these appeals on merits. However, he has tried to support the impugned order Annexure P-I on the ground that the Authority concerned had carefully considered the facts on record and only thereafter he had: found that no prima facie case for stay; or waiver of the pre-deposit was made by the petitioners. How-ever, at this stage it is: not necessary to go into further details of this, ordef. This Court was already pleased, to direct to consider and dispose of .the appeals on merits and during said-period no recovery was to be made from the petitioners. It is not the case of the respondents that this order has been modified or varied. This order still holds the field.

In this view of the matter, I find that there was no justification on the part of the Commissioner (Appeals) to pass the impugned order Annexure P-I. Consequently and in the result the impugned order Annexure P-I dated 19/22-5-1998 is hereby quashed and set aside; instead of the Appellate Authority is directed to consider and dispose of petitioner"s appeals in accordance,.with law within a period of 2 (Two) months hereof. It is further clarified that with regard to arrears of duty no coercive method shall be adopted against the petitioners till the pendency of the appeals. With the aforesaid observations, this petition and the connected petitions stand finally disposed of with no order as to costs.

A copy of this order be placed in the connected petitions.

CC on payment in two days.