
(2004) 10 GUJ CK 0015
In the Gujarat High Court

Case No : Special Civil Application No. 5657 of 2004

Kolety Gum Industries

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

Citation : (2005) 184 ELT 344

Hon'ble Judges : K.A. Puj, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Kamal Trivedi and R.D. Dave, for the Appellant; Dharmishta Raval and Jitendra Malkan, SCGSC, for the Respondent

Final Decision : Allowed

Judgement

A.R. Dave, J.—RULE. Service of rule is waived by learned Senior Standing Counsel Shri Jitendra Malkan for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The short question, which has been involved in the petition, is whether the petitioner should be asked to pre-deposit a sum of Rs. 25 lakhs as directed by the CESTAT.

3. Looking to the fact that Appeal No. E/1703/03-Mum filed against Order-in-Original No. M/222/WZB/2004/C-I is still pending before the CESTAT, we would not like to go into the merits of the matter. However, we cannot refrain from observing that, in the order passed on the application, the submissions made on behalf of the petitioner had not been properly appreciated. Looking to the said peculiar facts, in our opinion, ends of justice would be served if the petitioner is directed to deposit a further sum of Rs. 2.50 lakhs by way of pre-deposit on or before 30th October, 2004.

4. Senior advocate Shri Kamal Trivedi appearing for the petitioner has submitted that the petitioner is not manufacturing guar gum, but is manufacturing only guar powder, which is not subject to any duty under the provisions of Central

Excise Act, 1944.

5. Learned Senior Standing Counsel Shri Jitendra Malkan could not dispute the said fact. It has been however submitted by him that at this stage the petition is not maintainable, as the appeal is pending before the CESTAT.

6. We would not like to go into the merits of the petition as stated earlier. It is true that the learned advocate appearing for the respondents has relied upon the judgment delivered by this Court in SCA 11489/2004 on 10th September, 2004 in the case of Sterlite Industries (India) Ltd. v. Union of India so as to substantiate his case that at this stage this petition, should not be entertained.

7. However, we are of the opinion that the CESTAT did not exercise its discretion properly and did not assign reasons while turning down the application submitted by the petitioner praying for exemption from pre-deposit.

8. Looking to the facts of the case, the CESTAT is directed to dispose of the appeal, which is subject matter of this petition, preferably within three months from the date of receipt of this order.

9. In view of the above order, the petition is allowed. Rule is made absolute to the above effect with no order as to costs.

10. Learned Senior Standing Counsel Shri Jitendra Malkan has made a request for directing the parties to maintain status quo for some time. We do not see any reason for giving such a direction and, therefore, we reject the request.

Direct service is permitted.