(2003) 09 BOM CK 0101

In the Bombay High Court

Case No : Writ Petition No. 4839 of 2003

Krishnakant Sakharam Ghag APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 02-09-2003

Acts Referred:

Citation : (2005) 124 ECR 393

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Shreedharan and A. Dighe, for the Appellant; R.V. Desai and P.S. Jetly, instructed by T.C. Kaushik, for the Respondent

Judgement

1. Heard learned Counsel for the petitioner. Rule, returnable early.

2. So far as interim relief is concerned, we may observe that while hearing this petition for admission and stay, it has come to our notice that M/s. Parekh Prints Ltd., claiming to be the processors engaged in processing of man-made fabrics falling under Chapters 54 and 55 of the with some others had filed writ petitions in the Delhi High Court challenging the levy of excise duty on processing of man-made fabrics. The petitioner herein was also one of the writ petitioners before the Delhi High Court. The petition was filed in the name of his partnership firm M/s. Amit Textile Processors bearing No. 2523 of 1990.

3. The batch of petitions challenging levy of additional duty of excise on man-made fabrics was heard by the Delhi High Court and the petitions were disposed of by a common judgment dated 9th July, 1991.

4. The petition filed by the present petitioner was left out when the batch of petitions was decided. Consequently the petition filed by the petitioner in the name of M/s. Amit Textile Processors was not before the Delhi High Court. The writ petitions, which were heard by Delhi High Court, were dismissed on merits vide judgment dated 9th July, 1991 delivered in the case of Parekh Prints Vs. Union of India, . The copy of the said judgment is placed on record. The Delhi

High Court while dismissing the writ petitions directed payment of interest at the rate of 17.5% per annum.

5. It appears that the Central Excise Department after disposal of the batch of petitions by the Delhi High Court proceeded to pass the order-in-original in case of the firm of the petitioner and confirmed the demand notice and directed payment of duty liability determined in the sum of Rs. 19,09,999.95 i.e. (Rs. 20,14,080.70 minus Rs. 1,04,080.95 already paid = Rs. 19,09,999.95) and also requested the petitioners to calculate and pay interest thereon in terms of the judgment of Delhi High Court at the rate of 17.5% per annum from the date on which the duty was liable to be paid till the date when the duty was actually paid. The petitioner did not challenge this order, with the result, the order-in-original became final and conclusive.

6. After suffering the above order-in-original, the petition filed by the petitioner came up before the Delhi High Court for disposal since the said petition was left out when the Delhi High Court decided batch of writ petitions filed by other processors.

7. When the above Writ Petition No. 2523/1990 filed by the petitioner came up for hearing on 22nd January, 1992 the Delhi High Court passed the following order:

"This matter is squarely covered by the decision dated 9th July 1991 dismissing Civil Writ Petition No. 2422/90, Parekh Prints and Ors. v. Union of India.

The writ petition accordingly is dismissed."

8. The learned counsel for the petitioner while challenging the order of attachment passed by the Central Excise Officer contended that the amount of interest cannot be said to be a liability warranting recovery from him since no such interest was awarded against him by the Delhi High Court, as such the attachment is bad and liable to be lifted. He also challenged the power and authority to attach the property on a technical ground employing principles of interpretation of statute. The petitioner instead of approaching Delhi High Court to get the order clarified chose to file writ petition in this Court in the garb of challenging the order of attachment and indirectly the order-in-original which has become final and conclusive.

9. It is true that while passing the above order dated 22nd January, 1992 in the case of the petitioner''s firm, the Delhi High Court did not make any reference to the award of interest. However, on reading of the order in question in its proper spirit and perspective, it would be clear that the petition of the petitioner came to be disposed of by the Delhi High Court in pursuance of its earlier order dated 9th July, 1991 passed in the case of Parekh Prints Vs. Union of India, wherein the Court had awarded interest at the rate of 17.5% per annum. It is a settled principle of law that the order of the Court is not required to be interpreted applying the principles of interpretation of statute. It should be understood by

employing common sense approach.

10. The petitioner after suffering the adverse order is trying to take advantage of the technical omission of the Delhi High Court to make specific reference to the award of interest, which, according to us, is implicit in the order. We feel that it would be our duty not to allow any litigant to frustrate the writ, issued by a competent High Court, on the basis of technicalities and avoid implementation thereof. In the circumstances, interest of justice demands direction to the petitioner to deposit in this Court entire amount of interest with arrears of duty, if any, within four weeks from today.

11. On deposit of the aforesaid amount, the attachment on the petitioner''s property shall stand lifted, subject to the result of the petition. In the event of failure on the part of the petitioner to deposit the aforesaid amount as directed herein within four weeks from today, petition shall stand automatically dismissed without reference to the Court. This order is being passed in the peculiar facts of this case noticing an attempt to frustrate the order of the Delhi High Court, especially, when the order-in-original has become final and conclusive and merits of the order are not under challenge.

12. All the concerned parties to act on ordinary copy of this order duly authenticated by the Associate /Personal Assistant of this Court.