(1999) 07 AHC CK 0183

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 653 of 1999

Kurt O John Shoe Components (I) Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 07-07-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F
Constitution of India, 1950 — Article 226

Citation : (1999) 114 ELT 804

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Sunil Ambwani, for the Appellant; Surya Prakash, for the Respondent

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India, the petitioner challenges an order dated 16-4-1999 passed by the Commissioner (Appeals), Customs and Central Excise, Ghaziabad whereby on an application moved by the petitioner under the proviso to Section 35F of the Central Excise Act, 1944 for dispensing with the condition of pre-deposit of adjudicated dues, the Commissioner directed the petitioner to deposit Rs. 22 lacs only. The petitioner also challenges the letter of the Superintendent (Appeals) dated 9-6-1999 by which the petitioner''s request for modification of the aforesaid order was rejected.

2. I have heard Sri Sunil Ambwani, learned Counsel for the petitioner and Sri Surya Prakash, learned Standing Counsel for the respondents. No counter affidavit was proposed to be filed and the petitioner has been heard finally at the admission stage.

3. The petitioner is a manufacturer of shoe components which are sold to manufacturers of shoes who used those components in the manufacture of shoes that are ultimately exported. The petitioner claims exemption from Excise duty

on the ground that the goods have actually been exported outside India and was entitled to exemption. The Asstt. Commissioner, Central Excise, Noida initiated proceedings-for the levy of excise duty and had ultimately levied an amount of Rs. 43,61,276.00 as he came to the conclusion that the petitioner was not entitled to exemption as the petitioner had not complied with the requisite procedure i.e. CT-2. It is against the said order that the petitioner has preferred an appeal before the Commissioner and applied for dispensing with the condition of pre-deposit inter alia on the ground of financial difficulty. The Commissioner noticed that the petitioner had filed a balance sheet for the year 1997-98 which shows losses at Rs. 26,72,762.99P suffered during the financial year. He, however, rejected the application on the ground that a prima facie case was in favour of the department. The subsequent application by the petitioner stating that the petitioner had suffered losses in the past also and had accumulated losses to the extent of Rs. 1,06,88,400/- and was in a bad financial position, has also been rejected.

4. A perusal of the impugned order would shows that the fact that the petitioner is running in losses is not disputed. The department may have a prima facie case, as observed by the Commissioner, but the appeal has to be finally disposed of and the petitioner''s right to appeal cannot be jeopardised merely because the appellate authority thinks that the prima facie the respondent has a better case. In my view, looking to the financial condition of the petitioner, the requirement of a pre-deposit of Rs. 22 lacs would place an unbearable burden on the petitioner. In my view, a pre-deposit of Rs. 5 lacs would meet the ends of justice by enabling the petitioner to contest its appeal on merits.

5. The writ petition is, therefore, allowed and the impugned order dated 16-4-1999 is modified to the effect that in case the petitioner deposits Rs. five lacs towards the adjudicated dues by the 31st of July, 1999, the condition of pre-deposit of the balance of the adjudicated dues shall stand waived.

