(1992) 09 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 1665 of 1992

Lakhanpal National Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 02-09-1992

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A, 33, 35Q

Citation : (1993) 44 ECR 150 : (1993) 63 ELT 61

Hon'ble Judges : S.P. Kurdukar, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri A. Hidayatulla, instructed by M/s. Mulla and Mulla and C.B.C, for the Appellant; Shri M.I. Sethna and Shri S.M. Shah, for the Respondent

Judgement

1. This writ petition is directed against an elaborate judgment and order dated 30-3-1992 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench, Bombay (hereinafter referred to as the CEGAT). This order was made by the CEGAT in an appeal filed by the writ petitioners overruling their objection relating to the request of prosecuting agency being represented by an authorised representative i.e. Advocate in the adjudication proceedings before the Collector (see Exhibit C to the petition).

2. The Division Bench of this Court on 29-7-1992 issued rule nisi and granted ad interim order in terms of prayer (b) and adjourned the writ petition for further hearing on interim relief to 31-7-1992. Matter was adjourned from time to time and today the writ petition is placed before us for considering interim relief.

3. Mr. Hidaytulla, learned Counsel appearing in support of this petition prayed that since this Court has issued rule nisi and granted ad interim order, the said ad interim order be continued until disposal of the petition. He further urged that let the writ petition be fixed immediately for hearing since it has got wide impact. As far as interim relief is concerned, Mr. Hidaytulla urged that u/s 35Q of the Central Excises and Salt Act, 1944, a person who is entitled or required to appear before the Central Excise Officer is permitted to appear by an authorised

representative. There is no indication in this section permitting the Collector who has issued the show cause notice to allow the department to be represented by an authorised representative. In view of this statutory provision, Counsel urged that overruling of the objection raised by the petitioners over appointment of the representative to represent the department before the Collector in show cause notice proceedings pending before him is illegal and without jurisdiction.

4. Mr. Sethna, learned Counsel appearing for Respondents Nos. 1 and 4, drew our attention to the affidavit-in-reply of Shri O.P. Khanduja, Assistant Director, Directorate General of Anti-Evasion, Bombay, sworn on 25th August 1992. To this affidavit Exh. 2 is a statement which indicates the evasion of excise duty and stakes involved in various other cases. Mr. Sethna urged that in the present case, issue in the show cause notice relates to evasion of 3.15 crores of excise duty. The show cause notice was issued on or about 21st February 1989. He further urged that various complicated questions relating to suppression and fraud are the subject matter of show cause notice and having regard to the facts and circumstances of the case, the Collector, who issued the show cause notice thought it fit that the Department be represented by an authorised representative. He also urged that no prejudice is caused to the petitioners. Petitioners are represented by Advocates. Issues involved are complicated. In the interest of justice interim relief be refused.

5. After hearing Counsel for the parties, we are of the opinion that Section 11A needs to be read with Section 35Q. In the case of this nature it would be permissible for the Collector of Customs to take assistance of an authorised representative. In our opinion, no prejudice whatsoever would be caused to the petitioners. Petitioners are represented by several learned Advocates including some Senior Counsel. As against this, the Collector has to deal with several complex questions and if he thought fit to take assistance from an authorised representative, in the facts and circumstances of the present case, we do not see any illegality. Having regard to the facts and circumstances of the case, in our opinion, this is not a fit case where interim order should be granted. Interim order is accordingly refused. Ad interim order to stand vacated.

6. The observations made in this order are tentative.

7. Mr. Hidaytulla applies for continuation of the ad interim order passed by this Court on 29-7-1992. Mr. Sethna vehemently opposes. In our opinion, this is not a fit case where ad interim order be allowed to continue. Application rejected.

8. Certified copy of the order if applied for, to be furnished within one week.

