
(1996) 11 MP CK 0039

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1561 of 1996

Marvellous Marble Pvt. Ltd.

APPELLANT

Vs

Commr. (Appeals), C. Ex.

RESPONDENT

Date of Decision : 22-11-1996

Acts Referred:

Citation : (1997) 96 ELT 247

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : A. Upadhayay, for the Appellant; Joshi, for the Respondent

Final Decision : Allowed

Judgement

A.R. Tiwari, J.—This petition is filed for the under noted reliefs :-

"In view of the above facts and grounds stated above, the petitioners seek the following reliefs :-

(a) that the respondent No. 2 and his subordinate officers should be restrained from invoking the order dated 30-10-1996 (Annexure-T/2"), letters dated 1-11-1996 (Annexure-"P/3") and dated 6/7-11-1996 (An-nexure-"P/6") till the disposal of stay application/appeal filed by the petitioners;

(b) to allow this petition with costs; and

(c) to pass such other order(s) as may be deemed appropriate in the facts and circumstances of the case, to grant relief to the petitioner."

2. It is an admitted position that the petitioner has filed the appeal before Commissioner (Appeals) Central Excise, Indore and has also filed an application on 5-11-1996 in the aforesaid appeal to obtain exemption from the deposit of the amount for hearing the appeal on merits. This application is pending. During the pendency of this application, the respondents are attempting to recover the amount from the petitioner. The petitioner has, therefore, filed this writ petition.

3. I have heard Shri Ashutosh Upadhyay, learned Counsel for the petitioner and Shri Joshi, learned Counsel for the respondents for final disposal of this petition on consent.

4. The Counsel for the petitioner has placed reliance on Gajra Bevel Gears Ltd. Vs. Union of India (UOI), . In the aforesaid decision rendered by the Division Bench, it is held as under :-

"We, therefore, dispose of this petition by giving a direction that the application for stay and /or application for waiving the condition of pre-deposit of the amount of duty recoverable under the impugned order, shall be disposed of by the respondent No. 2, before the respondents proceed to recover any amount recoverable under the impugned order which has been appealed against before the Collector (Appeals), Indore. We also direct that the respondents shall not recover any amount recoverable under the order appealed against before the Collector (Appeals) till the Collector (Appeals) decides the application for waiving the condition of pre-deposit of the amount recoverable under the impugned order and/or the application for stay of recovery proceedings."

5. The aforesaid decision governs the fate of this petition.

6. In the result, I allow this petition and direct that the respondents shall not recover the amount disputed in the aforesaid appeal till disposal of the application dated 5-11-1996 by the Commissioner (Appeals), Central Excise, Indore (Annexure-"P/4").

7. The petition is, thus, allowed in terms indicated above without any orders as to costs.