(1987) 11 BOM CK 0007

In the Bombay High Court

Case No : Notice of Motion No. 2764 of 1987, Appeal No. 1192 of 1987 and Writ Petition No. 1539 of 1981

M.C. Tahkur, Asstt. Collector of Central Excise and Another — APPELLANT

Vs

Extrusion Processors Pvt. Ltd. and Another — RESPONDENT

Date of Decision : 23-11-1987

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2(f)

Citation : (1992) 38 ECR 450

Hon'ble Judges : Pendse, J;Kotwal, J

Bench : Division Bench

Judgement

Pendse, J.—By this Notice of Motion, the Assistant Collector of Central Excise is seeking stay of the operation of the order passed by the learned Single Judge in Writ Petition No. 1539 of 1981. Appeal No. 1192 of 1987 against the judgment has already been admitted and is pending for hearing and final disposal. By the impugned order, the learned Single Judge gave a declaration that amendment to Section 2(f) and Tariff Item No. 27 in the First Schedule to the Central Excises and Salt Act, 1944 and also Tariff Item 8312.11 in Schedule to the Central Excise Tariff Act are unconstitutional, ultra vires and null and void. A further declaration was given that no excise duty can be levied with reference to the process of lacquering and/or printing of plain aluminium collapsible tubes or rigid cans. As the consequential relief of the declaration is granted, the learned Single Judge quashed the order dated July 14, 1981 passed by the Excise authorities and further directed the appellants to refund the amount of excise duty received or collected from the petitioners with interest at the rate of 18% per annum from the date of collection till the date of refund.

2. We have heard Mr. Dhanuka, learned Counsel appearing on behalf of the appellants and Mr. Ganesh, learned Counsel appearing on behalf of the respondents. In our judgment, the appellants are entitled to the grant of stay of the operation of relief granted in terms of prayers (a), (b), (c) and (e). As

regards the relief granted in terms of prayer (f), that is in connection with the refund of amount Mr. Dhanuka points out that the respondents have not even filed application for refund and, therefore, the Department could not process the same to ascertain what amount of refund is to be granted. Mr. Ganesh states that the respondents would file requisite application for refund for a period of seven years within two or three weeks from today. In case such applications are filed, then the appellants shall process it and proceed to dispose it on merits. It is open for the respondents to approach this Court for direction to direct the appellants to make refund, if any amount is found to be due and payable. It is also open for the respondents to approach this Court for seeking any other direction in respect of this claim of refund.

3. Accordingly, the Notice of Motion is made absolute only in respect of relief granted by the learned Single Judge in terms of prayers (a), (b), (c) and (e). As regards prayer (f), the appellants shall process and determine the claim of refund in case such claim is filed by the respondents within three weeks from today. Costs in the cause.

4. The hearing of Appeal No. 1192 of 1987 is expedited and appeal to be placed on board after re-opening in January 1988. Paper book dispensed with on condition that the appellants would file properly bound compilation. The properly bound compilation to be filed within IS days from today.

