(1991) 04 MAD CK 0084

In the Madras High Court

Case No : Writ Petition No. 4830 of 1991

Modern Steel Industries APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-04-1991

Acts Referred:
Central Excise Rules, 1944 — Rule 230
Central Excises and Salt Act, 1944 — Section 35F

Citation : (1992) 43 ECR 514 : (1992) 57 ELT 220

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Shri R. Thiagarajan, for the Appellant; Shri K. Jayachandran, A.C.G.S.C., for the Respondent

Judgement

Kanakaraj, J. 1. Admit. Mr. Jayachandran, Additional Central Government Standing Counsel takes notice.

2. In and by the order dated 25-8-1989, the Additional Collector of Central Excise, Coimbatore, states that the petitioner had erroneously availed of the benefit of Notification No. 208 of 1983 and after giving a show cause notice, he came to the conclusion that the petitioner is liable to pay a sum of Rs. 2,92,201.57 and a penalty of Rs. 2,000/-. The petitioner had filed an appeal before the second respondent-Tribunal. Pending orders on the said appeal, the 4th respondent-Assistant Collector of Central Excise, Pollachi Division, by order dated 7-2-1991 detained all the excisable goods, all materials and preparations in the plant as well as the machineries, vessels etc., in accordance with Rule 230 of the Central Excise Rules, 1944. This writ petition is against the said order of the 4th respondent dated 7-2-1991.

3. After the filing of this writ petition, the second respondent-Tribunal has passed an order on 7-3-1991, which order is now brought to my notice by Mr. R. Thiagarajan, learned Senior Counsel and arguments were advanced on the basis of this order dated 7-3-1991. Therefore, I am disposing of this writ petition on

the basis of the correctness of the order dated 7-3-1991.

4. In the order dated 7-3-1991, reference is made to the offer of the counsel before the Tribunal to make pre-deposit of Rs. 1,00,000/-. In fact, it is stated that the Bench accepts the offer and directs payment of Rs. 1,00,000/- on or before 24-6-1991, as a condition for waiving the pre-deposit of the balance amount. They have also held that the petitioner has no prima facie case and they have looked into the question of financial position of the petitioner. Inasmuch as the Tribunal has categorically stated that they have accepted only the offer of the counsel before them, it is not possible for me to hold otherwise. Therefore, the only direction that I can give is that the petitioner can move the Tribunal again and convince them that no such offer was made. Even if the petitioner wants to seek extension of time for making the deposit, it is proper for the petitioner to approach the Tribunal. So far as the order of the Assistant Collector dated 7-2-1991 is concerned, no exception can be taken to the same because it was passed at a time when there was no stay of the order of the Additional Collector of Central Excise dated 25-8-1989. In this view of the matter, this writ petition is ordered in the following terms : The petitioner is given liberty to move the second respondent-Tribunal seeking modification of the order dated 7-3-1991 and seeking extension for payment of the amount. Having regard to the claim made, if proper reasons are given, the Tribunal will look into the matter and try to reduce the hardship, if any, suffered by the petitioner. There will be no order as to costs.