(2005) 09 GUJ CK 0019

In the Gujarat High Court

Case No : Special Civil Application No. 15023 of 2005

Navpad Textile Industries Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-09-2005

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35F
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(1)

Citation : (2009) 13 STR 460

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Dhaval Shah, for the Appellant; Jitendra Malkan, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—Heard Mr. Dhaval Shah, the learned advocate for the petitioner.

2. This petition primarily challenges the order dated 26-3-2004 made by the Customs, Excise & Service Tax Appellate Tribunal, West Zone, Mumbai.

3. As the facts reveal, the petitioner had moved the stay application before the Tribunal against the order quantifying amount of duty at Rs. 76,42,921/- along with penalty of Rs. 52,64,948/- and Rs. 24,00,000/- on the petitioner. After hearing both the sides, the Tribunal found that this was a case of undervaluation, the petitioner having indicated one valuation on central excise invoice and another on the commercial invoice. Therefore, it was held that the petitioner had not been able to make out any case in favour of full waiver of pre-deposit u/s 35F of the Central Excise Act, 1944 (the Act). Accordingly, the Tribunal directed the petitioner to deposit 50% of duty by 30th April 2003 and report compliance on 5-5-2003. Upon such pre-deposit being made, rest of the duty demand and penalty levied on the petitioner and the second appellant before the Tribunal were to be waived during pendency of the appeal. This order was made on 17th April 2003.

4. The, petitioner filed a miscellaneous application for modification of the stay order and one of the grounds on the basis of which the relief was sought was that the petitioner-company was registered with Board of Industrial & Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985. On 17th February 2004, the Tribunal made an order after hearing both the sides and came to the conclusion that: "It is seen that there is no change of circumstances or no new ground has been taken warranting modification of the said stay order". While passing the aforesaid order, the Tribunal has taken into consideration the ratio of the decision rendered by High Court of Bombay in case of Baron International Ltd. Vs. Union of India (UOI), . It is stated in the said decision :

In our view, such an application was not tenable. At the threshold, Tribunal ought to have refused to entertain such application for want of prima facie case warranting modification of the earlier order, and ought to have rejected the same on this short ground.

5. Thereafter, on 26-3-2004, the appeal came to be dismissed for non-prosecution under provisions of Section 35F of the Act read with the stay order and the order on the Miscellaneous Application for the reason that, on the date of hearing, neither the appellant was present nor was there any compliance report available on record.

6. Mr. Shah on behalf of the petitioner made strenuous efforts to point, out that once the petitioner was registered with BIFR, the Tribunal could not have made any order directing pre-deposit of any amount, and that, the entire demand ought to have been stayed. In support of the said proposition, reliance was placed on a decision rendered by this Court in case of Texplast Engineers Ltd. Vs. Union of India (UOI),

7. The facts narrated hereinbefore go to show that when the Tribunal made the order directing pre-deposit and rejecting the miscellaneous application for modification, it had taken into consideration all the facts necessary for disposal of the stay application, including the prima facie case of the petitioner as well as the ground of financial hardship. No new ground has been pointed out before this Court which was not considered by the Tribunal. The reliance on decision of this Court in case of Texplast Engineers Ltd. (supra), is misplaced. In the first instance, the said decision does not lay down that merely because a company is registered before the BIFR, no demand could be raised or pursued in absolute terms. In fact, this Court has taken cognizance of the earlier decision of this Court, dated 31-3-2004 in Special Civil Application No. 9027 of 2003 to point out that the protection available u/s 22(1) of the SICA is available only in respect of the demand pertaining to period prior to the date of registration. In the present case, as can be seen from the miscellaneous application moved by the petitioner, no details are furnished as to the period of demand. Not only that, when the Court called upon the Learned advocate for the petitioner, subsequently the order of the appellate authority was placed on record to point out that the registration

was not accepted by the secured creditors and the matter had been challenged before the appellate authority. Therefore, no infirmity can be found in the impugned order of Tribunal dismissing the appeal for non-prosecution, in the facts and circumstances of the case. The petitioner has failed to make out any prima facie case for interfering with the impugned order of Tribunal dated 26th March 2004.

8. It is also necessary to take note of the fact that the order dated 26th March 2004 came to be challenged by the petitioner only after the petitioner was called upon to discharge its liability by the respondent authorities vide communication dated 2-7-2004. Thus, it goes to show that, for all intents and purposes, the petitioner had accepted the impugned order of Tribunal, the challenge having been raised belatedly only when the action for recovery was initiated.

9. In the result, the petition is summarily rejected.

