(1996) 10 MAD CK 0029

In the Madras High Court

Case No : W.A. No. 922 of 1996 and CMP No''s. 13603 and 13879 of 1996 (CMP 13879/96 in W.A. No. 889 of 1996)

Neo Intex Mills Ltd. APPELLANT

Vs

Asstt. Commissioner of Customs, Tuticorin RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1997) 57 ECC 168

Hon'ble Judges : K.A. Swami, C.J;Raju, J

Bench : Division Bench

Advocate : Shri Habibulla Basha, for B. Sountharapandian, for the Appellant; Shri K. Jayachandran, Addl. Central Government Standing Counsel, for the Respondent

Judgement

K. A. Swami, C.J.—This appeal is preferred against the order dated 29th August, 1996 passed by the learned single Judge in Writ Petition

No. 8635 of 1996. In the writ petition, the petitioner sought for a direction to the respondents to implement the order of the Customs, Excise and

Gold (Control) Appellate Tribunal, dated 18-5-1996. The learned single Judge has disposed of the writ petition with the following direction :-

I have considered the respective contentions of the learned senior counsel for the petitioner and the respondents. It is well settled by the ruling of

the Supreme Court in Union of India and others Vs. Kamlakshi Finance Corporation Ltd., that the order of the Customs, Excise and Gold

(Control) Appellate Tribunal, South Zonal Bench at Madras is binding on all the subordinate authorities working within its jurisdiction. Further, the

principles of judicial discipline require that the orders of the highest appellate authority should be followed unreservedly by the subordinate authorities. Further, the subject matter of the appeal can furnish no grounds for not following it, unless its operation has been suspended by the

competent court. It is the case of the petitioner that the petitioner has filed a Caveat before the Supreme Court and so far no notice of stay has

been received by the petitioner. In view of the above, the respondents are directed to implement the order of the Customs, Excise and Gold

(Control) Appellate Tribunal, South Zonal Bench, Madras, in Appeal No. C/V-129/96/Md. & C/V-130/96/Md. dated 18-5-1996 in accordance

with law, within one week from the date of receipt of the copy of this order. It is open to the respondents to direct the petitioner to execute

necessary customs surety or security bond to safeguard the interest of revenue to cover the disputed amounts, in case the contention of the revenue

is accepted in appeal.

2. As against the aforesaid order, the respondents in the writ petition came up in writ Appeal No. 889 of 1996. That was disposed of at the

admission stage with the following observations :-

Thus, if the appellants succeed before the Supreme Court, the respondent is liable to reimburse. Even otherwise, before the order of the Tribunal is

implemented pursuant to the direction of the learned single Judge, if the appellants are able to secure the interim order from the Supreme Court, the

question of implementing the order of the Tribunal does not arise. Whatever it may be, the learned single Judge has further safeguarded the interest

of the appellants by enabling them to direct the writ petitioner to execute the necessary customs surety or security bond to safeguard the interest of

the Revenue to cover the disputed amounts in case the contention of the appellants is accepted in appeal. That means, the Customs Department

can very well insist for the solvent surety of the value sufficient to meet the amount involved in the case. It is not a mere personal bond. Unless the

required surety with solvency certificate is furnished and accepted, the question of implementing the order of the Appellate Tribunal as directed by

the learned single Judge does not arise.

With the above observations, the appeal is dismissed. However, the time allowed by the learned single Judge for implementing the order of the

Tribunal is extended by two weeks from today.

3. In that appeal also, the writ petitioner, who has filed Writ Appeal No. 922 of

1996, has filed an application C.M.P. 13879 of 1996 seeking for

the following direction :-

For the reasons stated in the accompanying affidavit, it is most respectfully prayed that this Hon''ble Court may be pleased to pass appropriate

orders/directions directing the Appellants in W.A. No. 889 of 1996 and the Respondents in W.A. No. 922 of 1996 to release the goods viz. six

auto coners covered by Bill of Entry No. 75, dated 8-11-1995 and Bill of Entry No. 76, dated 8-11-1995 to the Respondents in W.A. No. 889

of 1996 and the appellants in W.A. No. 922 of 1996 forthwith on their furnishing a surety bond without any solvency certificate but with an

undertaking that they will not alienate the goods released till the disposal of the Civil Appeal said to have been filed before the Hon''ble Supreme

Court by the Department and pass such further order or orders as this Hon''ble Court may deem fit and proper in the circumstances of the case

and render justice.

4. The question for consideration is whether the respondents in the writ petition can insist for security. The CEGAT has held against the

Department and in favour of the writ petitioner. As that order was not implemented by the respondents in the writ petition, the petitioner had

prayed for a direction. The respondents in the writ petition have to implement the order of the CEGAT. No relief can be sought for by the

respondents against the order of CEGAT before this Court. However, they have got a remedy by way of an appeal to the Supreme Court. It is

stated that an appeal has been filed before the Supreme Court, but it has not come up before the Court for consideration. We are of the view that

when no appeal lies to this Court against the order of the CEGAT and an appeal lies only to the Supreme Court, no petition under Article 226 of

the Constitution can be entertained by this Court and no direction can be given against the party who had succeeded before the CEGAT. The

party who has succeeded in the CEGAT can approach this Court for a direction to implement the order of the CEGAT. But, in a petition filed by

the writ petitioner directing the respondents to implement the order of the CEGAT, a direction is issued enabling the respondents to insist for the

surety or security. Such a direction amounts to granting a relief to the respondents as against the order of the CEGAT, against which no writ petition can be entertained for quashing it; nor an appeal lies before this Court. Therefore, we are of the view that the order directing the writ

petition to furnish security cannot be sustained.

5. However, learned counsel for the appellant submits that the appellant is prepared to furnish personal bond on behalf of the company for the

amount which may become due to the Department in the event the Department succeeds before the Supreme Court, before the goods are

released. In our view, this must satisfy the Department and would be sufficient to safeguard the interest of the Department until the Department is

able to obtain an interim order from the Supreme Court. In this view of the matter, the observations made by us in the order dated 26-9-1996 in

Writ Appeal No. 889 of 1996 without notice to the writ petitioner, also require to be modified. The respondent in that appeal, who was not served

at that time has now filed the application as pointed out earlier in C.M.P. No. 13879 of 1996, for issuing certain direction to the Department to

forthwith release the goods on obtaining surety bonds without any solvency certificate. In the light of what is stated above. We consider it

necessary to modify the order dated 26-9-1996 passed in W.A. No. 889 of 1996 and dispose of the Application C.M.P. No. 13879 of 1996

and W.A. No. 922 of 1996 with the following directions :-

The appellant in Writ Appeal No. 922 of 1996 shall furnish personal bond on behalf of the company for the amount that may became due to the

Department in the event it succeeds in the Supreme Court. The personal bond so executed shall contain the schedule of the machines that are

imported and also the net worth of the company. On executing such personal bond, the goods in question be released.

6. C.M.P. 13603/96 is dismissed.

