(2000) 01 MP CK 0012

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 1281 and 1287/99

Neo Sack Ltd. APPELLANT

Vs

Commissioner (Appeals) C. Ex. RESPONDENT

Date of Decision : 03-01-2000

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35F

Citation : (2000) 119 ELT 522

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : I.C. Upadhyay, for the Appellant; B.C. Neema, for the Respondent

Judgement

J.G. Chitre, J.—Both these petitions are being decided by a common order because these petitions are being decided strictly on question of law.

2. Shri I.C. Upadhyay, counsel for petitioner. Shri B.G. Neema, standing counsel for respondents.

3. These petitions are being heard at this stage by issuing rule and by consent, the rule returnable forthwith. By consent, these petitions are taken up for hearing and final disposal, in the interest of justice.

4. Both the advocates placed reliance on the judgment of Bombay High Court in the matter of Velcord Textiles Vs. Union of India (UOI) and Others, (a Division Bench judgment) where the High Court of Bombay held -

"Even if the commissioner of Central Excise (Appeals) Act is dealing with the matter reflecting around provisions of Section 35F of Central Excise Act, 1944 (hereinafter referred as Act for convenience) is duty bound to apply judicial mind, giving the reasons justifying the conclusion made to be eitherway."

5. Same sort of view is taken by Delhi High Court in the matter of Chakara Chemicals & Soaps Inds. v. U.O.I. reported in 1999 (84) ECR 300 (). The Commissioner of Central Excise (Appeals), Bhopal has rejected the applications

preferred by the petitioners for stay/waiver in view of provisions of Section 35F of the Act. The Commissioner placed reliance on the judgment of Supreme Court in the matter of Union of India and another Vs. M/s. Jesus Sales Corporation, . While passing order the Commissioner did not give reasons at all for justifying his conclusion, which has been assailed by these petitions.

6. The Commissioner (Appeals) while exercising powers u/s 35F of the Act, acts as quasi-judicial authority and he is obliged to discharge satisfactory functions which would show the application of judicial mind and assessment of the facts and circumstances of each and every case. Not only that, he is to weigh the material which has been placed before him and has to process it by the process of assessing the credentiality of the contentions of petitioners. That needs and exercise which should even prima facie show that it nothing but a judgment which has been by process of application of judicial mind. In the present matter unfortunately it does not appear to be so. Therefore, the orders which are being assailed by these petitions can not be upheld as judicial verdicts resulting in rejecting the prayer made by the petitioner for stay/waiver in view of provisions of Section 35F of the Act.

7. In the interest of justice and for maintaining a clean stream of justice the orders will have to be set aside and the both the matters will have to be remanded back to the Commissioner (Appeals) for disposal according to law and for passing a well reasoned order with appropriate application of judicial mind.

8. It was not proper on the part of the Commissioner (Appeals) to dismiss the appeals of the petitioners on account of defaults and non-deposit of the amount of duty.

9. The petitioners should report in the office of the Commissioner (Appeals) on 12-1-2000. No order as to costs keeping in view the facts and circumstances of the matter. As the said order has been set aside, the Commissioner should treat them as restored in accordance with law till final disposal. C.C.