(1994) 03 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 141 of 1994

New Vinod Silk Mills Pvt. Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 07-03-1994

Acts Referred:

Citation : (1997) 57 ECC 145 : (1994) 52 ECR 381 : (1994) 71 ELT 910

Hon'ble Judges : P.S. Patankar, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Shri P.D. Shah, instructed by M/s. Manilal Kher Ambalal and Company, for the Appellant; Shri R.V. Desai and Shri H.V. Mehta, for the Respondent

Judgement

Pendse, J.—Rule. Shri Desai waives service on behalf of respondents Nos. 1 and 2. By consent, petition taken on board and called out for hearing. Head Counsel.

The petition challenges legality of order dated November 1, 1993 passed by Customs, Excise and Gold (Control) Appellate Tribunal directing that the petitioners shall furnish a Bank Guarantee of Rs. 1,00,000/- within a period of 8 weeks from the date of order failing which the appeal preferred by the petitioners before the Tribunal to stand dismissed. The appeal was preferred by the petitioners to challenge the order directing payment of Rs. 1,53,612/- towards duty and Rs. 15,000/- towards penalty and for recovery of which the plant and machinery was ordered to be confiscated. In accordance with the rules, the petitioners were required to deposit the amount before appeal could be entertained. The petitioners sought exemption from deposit and the Tribunal passed the impugned order granting exemption but on condition of furnishing Bank guarantee of Rs. 1,00,000/-.

2. Shri Shah, learned counsel appearing on behalf of the petitioners, submitted that the direction to furnish Bank guarantee is not correct in view of the fact that the petitioner Company has been declared to be a Sick Industrial Company by the Board for Industries and Financial Reconstruction. The learned counsel

invited attention to the order dated February 26, 1991 passed by the Board and copy of which is annexed as Ex. ''A'' to the petition. In view of the fact that the petitioner Company has been declared as a Sick Industrial Company, it is not possible for the petitioners to furnish Bank guarantee and consequently, the claim of the petitioners that the appeal should be heard by the Tribunal without compliance with the requirement of pre-deposit deserves acceptance.

3. Accordingly, rule is made absolute and the impugned order November 1, 1993 passed by the Tribunal is set aside and the Tribunal is directed to dispose of the appeal on merit without condition of pre-deposit. In the circumstances of the case, there will be no order as to costs.

