(2000) 05 MP CK 0045

In the Madhya Pradesh High Court

Case No : Civil Writ Petition No''s. 581 and 783 of 2000

Prestige Metals P. Ltd. APPELLANT

Vs

CEGAT, New Delhi RESPONDENT

Date of Decision : 02-05-2000

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35B, 35F
Constitution of India, 1950 — Article 226, 227

Citation : (2001) 74 ECC 559 : (2002) 141 ELT 335

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : A.M. Mathur, for the Appellant; Patankar, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, J.—Both these petitions involve similar question of law and were, therefore, heard as connected matters.

2. Petitioners are aggrieved by dismissal of their appeals by CEGAT, mainly on the ground of non-compliance of the provision of Section 35F regarding deposit of the duty demanded and the penalty levied.

3. It is significant to note that petitioners'' applications filed under the proviso to Section 35F praying for dispensing with pre-deposit of the dues and the penalty were dismissed by the concerning Appellate Authorities. In the matter giving rise to Writ Petition No. 783/2000, the petitioners preferred Writ Petition before the main seat, Jabalpur, while in the matter giving rise to W.P. No. 583/2000, the petition was filed before this Bench. Learned Single Judge at Jabalpur passed an interim order dated 7-5-99 that "if within a period of three weeks from today the petitioner deposits 1/4th of the amount of duty, the appeal filed by the petitioner shall not be dismissed for non-compliance of the provisions relating to deposit". The Court further directed that non-compliance shall lead to automatic dismissal of the petition. The petitioners, it appears, did not comply with the aforesaid

order of the High Court and their petition thus stood dismissed under the pre-emptory order of the Court, The Commissioner (Appeals) passed order on 17-6-99 dismissing the appeal for non-compliance of the provision of Section 35F without going into the merits of the matter. The petitioners also approached the Supreme Court in SLP against the aforesaid order dated 7-5-1999 of this Court. The SLP was also dismissed. However, it was directed that on petitioners'' depositing l/4th of the amount of duty within four weeks, the appeal shall be restored and heard on merits by the Commissioner (Appeals). No such deposit, however, was made by the petitioners. Instead they went in Second Appeal before the CEGAT and again prayed for dispensing with the requirement of the pre-deposit u/s 35F. It is curious to note that none appeared for the petitioners before the CEGAT to press their appeal or the application. The CEGAT by its order dated 7-12-1999 dismissed the application as also the appeal.

4. More or less similar situation prevailed in the matter giving rise to W.P. No. 581/2000. Apparently, this is a second round of litigation by the petitioners more or less on the same ground that their applications for dispensing with the pre-deposit requirement ought to be allowed by the Appellate Authorities. It was, further, contended by learned Counsel for the petitioners that the CEGAT before dismissing their appeals ought to have considered their renewed prayer made under the proviso to Section 35F. Reliance is placed on the decision of M.I. Metal Sections Pvt. Ltd. Vs. Collector of C. Excise, Bangalore, and Ashoka Rubber Products Vs. Collector of C. Ex., .

5. It is true that deposit u/s 35F is not a condition precedent for filing of an appeal, but it is certainly a condition precedent for hearing the appeal on merits unless the pre-deposit requirement is dispensed with by the Appellate Authorities. In the instant cases, the petitioners'' prayer in this behalf has not only been considered duly and rejected by the concerning Appellate Authorities but their petitions filed before this Court also stood dismissed. Hon''ble Supreme Court has also declined to interfere in the matter. No case is made out for invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. In fact the petitions are devoid of any substance.

6. Accordingly, both the petitions are dismissed summarily.

