(1994) 11 MAD CK 0101

In the Madras High Court

Case No : W.A. No. 1439/94

R. Francis — APPELLANT

Vs

Customs, Excise and Gold (control) appellate Tribunal and Another — RESPONDENT

Date of Decision : 25-11-1994

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

Citation : (1996) 53 ECC 34

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.A. Swami, C.J.—The appeal preferred by the appellant against the order of the Collector of Central Excise is pending before the Customs, Excise and Gold (Control) Appellate Tribunal, Madras. Pending disposal of the appeal, the appellant sought for exempting him from depositing the amount, as per Section 35-F of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act). The CEGAT rejected the prayer for full exemption and directed him to deposit Rs. 50,000/- out of Rs. 1,32,896-70 and penalty of Rs. 5,000/-. He sought for review of that order. That was also rejected by the Tribunal on going into the merits. When the review was to be rejected, he sought for further time to deposit the amount. Accordingly, time was granted for depositing the amount. Not being satisfied with that, he has approached this Court in Writ Petition 16170/94. Learned single Judge by the order under appeal has rejected the writ petition.

2. We must point out that at the stage of Section 35-F of the Act, it is not so much the merits of the case that would be relevant, it is only the hardship that would be caused to the appellant in depositing the amount, is relevant. From the order of the Tribunal, it is noticed that no hardship appears to have been urged except pleading on merits that the appellant has a good case. Even then, the

tribunal after hearing the other side, has only directed the appellant to deposit only a sum of Rs. 50,000/-. That being so, we see no reason to admit the appeal. The appeal is accordingly rejected. The C.M.P. is also rejected. No order as to costs.

3. However, on hearing the learned Counsel for the respondents, we grant time to the appellant to deposit the amount as prayed for by the CEGAT till 15th December, 1994.

