(1998) 06 MP CK 0006

In the Madhya Pradesh High Court

Case No : Writ Petition No. 858/98

R.B. Polysacks APPELLANT

Vs

Commissioner (Appeals) Central Excise RESPONDENT

Date of Decision : 29-06-1998

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

Citation : (1998) 103 ELT 16

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : A.M. Mathur and Upadhyaya, for the Appellant; B.G. Neema, for the Respondent

Judgement

Deepak Verma, J.—Shri A.M. Mathur, Senior Counsel with Shri Upadhyaya Counsel for the petitioner. He is heard on the question of admission.

2. Learned Counsel submitted that in this petition and in connected petitions listed today, being W.P. No. 859 of 1998 [R.B. Polysacks, Indore v. The Commissioner (Appeals)] W.P. No. 860 of 1998 [Commercial v. Commissioner (Appeals)] W.P. No 861 of 1998 [Neo Sack Ltd., Indore v. The Commissioner Appeals)] W.P. No 862 of 1998 [Neo Sack Ltd. v. The Commissioner (Appeals)] and W.P. No. 877 of 1998 [R.B. Polysacks v. Commissioner (Appeals)], common questions are involved and the same identical order is under challenge, therefore, they be also heard and disposed of simultaneously. Copies of the petitioner together with annexures have been served on the standing counsel for respondent Shri B.G. Neema today. He was called to appear on behalf of the respondents. He has, accordingly, appeared before me. He utrenuously prays this Court for grant of time to file an appropriate reply and to put on record in writing that the petitioner has no case on merits.

3. However, looking to the limited controversy involved in this petition and the connected petitions, in the considered opinion of this Court, no useful purpose would have been served by keeping all these petitions pending as the question

involved in these petitions appears to be clearly covered by a judgment of this Court and other Courts passed from time to time. Reference in this regard is sufficient to be made, to a judgment reported in Sidhartha Tubes Ltd. Vs. Union of India (UOI), . In this view of the matter I have declined to grant any further time to the respondents to file reply in writing. However, the counsel for the parties have been heard at length.

4. I have perused the record. Shri B.G. Neema appearing for respondents has further tried to support the impugned order passed by Commissioner (Appeals) by submitting that the order shows that it has been passed after due consideration of all the material placed before the Appellate Authority. Only thereafter the Appellate Authority came to the conclusion that there was no prima facie case in favour of the petitioner. Consequently the petitioners'' said application has been rejected. According to him it was not necessary on the part of the Commissioner (Appeals) to elaborate further or to mention any more facts in this regard. According to him the order is in conformity with the provisions contained in Section 35F of the Central Excise Act, 1944.

5. However, without expressing any opinion of the propriety, correctness or illegality of the impugned order I deem it fit to give a direction to respondent No. 1 Commissioner (Appeals) to hear and consider the petitioners'' appeals on merits within a period of three months from the date of communication of this order in accordance with law. It is clarified that atleast for a period of 3 months or till the pendency of appeals, whichever is earlier, the respondent No. 2 shall not resort to any coercive method to recover the amount of duty from the petitioners.

6. With these observations all these petitions stand finally disposed of, but with no order as to costs. Parties shall appear before respondent No. 1 on 8th July, 1988. CC on payment.

