

(1999) 07 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No. 2283 of 1999

Ricoh India Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-07-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F, 4(1)

Citation : (1999) 66 ECC 534 : (2001) 95 ECR 429 : (2000) 125 ELT 469

Hon'ble Judges : C.K.Thakker, J;C.K. Buch, J

Bench : Division Bench

Advocate : P.M. Dave, for the Appellant; M. Jayant Patel, for the Respondent

Judgement

C.K. Thakker, J.—Learned counsel for the petitioner states that this petition will be treated as petition in Stay Order No. 391 of 1999. He further states that the petitioner will file one page separate petition in respect of Stay Order No. 392 of 1999 on or before 2nd August, 1999.

2. Rule. Mr. Jayant Patel, learned counsel appears and waives service of Rule for respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

3. This petition is filed for an appropriate writ, direction or order quashing and setting aside Stay Order No. 391 of 1999 (and Stay Order No. 392 of 1999) both dated 18th March, 1999.

4. The case of the petitioner was that it was a public limited company engaged in the business of manufacturing plain paper copiers. It has factory at Gandhinagar. A show cause notice was issued to the petitioner to pay excise duty contrary to law and though he was entitled to certain benefits on the basis of the law laid down by various High Courts, a demand in excess was made. Orders-in-original were passed by the authorities which were carried before the appellate authority. Along with appeals, stay applications were made, but relying upon a decision in M/s. Hickson Ltd. vs. Commissioner of Commercial Taxes 1979 (44) STC 11, the

appellate authority held that the show cause notices issued against the petitioner were in accordance with law and the petitioner was liable to pay the duty. Accordingly, orders were passed.

5. In Stay Order, the appellate authority observed in para-5 as under :-

"5. After examining the case records including the appellants contentions, I find that the findings of the adjudicating authority are legally sustainable for the reason that as per Section 4(1)(a)(iii) *ibid* if the goods are sold through a related person the price charged by the related person shall be the value for the levy of excise duty. Therefore, it appears that the appellants have short paid the duty and differential amount of duty is required to be recovered from them. The balance of convenience lies in favour of the Revenue. In their stay application the applicants have not urged any financial difficulty, however, they have stated that this will cause them undue hardship. However, I find that this is not the case which could cause them undue hardship as they have wrongly paid the less duty on the clearances effected by them. Therefore, there does not appear to be any ground for exercising full waiver of duty/penalty, they are directed to deposit Rs. 35,13,000/- as a pre-deposit u/s 35F of the Central Excise Act, 1944, by 30.03.99 and furnish the proof of deposit by 06.04.99. Subject to the deposit of this amount, the balance amount of duty Rs. 35,13,023/- confirmed against the firm shall stand waived till the final disposal of the appeal. However, if the appellants fail to comply with these directions, their main petition shall be liable to be dismissed for non-compliance of Section 35F *ibid*."

6. Mr. Dave, learned counsel for the petitioner submitted that there is non-application of mind on the part of the appellate authority in not granting interim relief as prayed for by the petitioner. He submitted that relevant decisions were *Tata Engineering and Locomotive Co. Ltd. vs. S. N. Guha Thakurta*, Supdt. of Central Excise and Others 1977 ELT (J 14) and *Indo-National Limited, Nellore-4 & Ors. vs. Union of India & Ors.* 1979 ELT (J 334). He submitted that the appellate authority was not right in following the decision in *Hickson*. In any case, it was obligatory on the part of the appellate authority to consider above two cases referred by the petitioner. He also submitted that though Hon"ble Supreme Court as well as this Court have held that it was not obligatory on the part of the appellate authority to afford personal hearing, they have not said that appellate authority should never grant personal hearing. The grievance of Mr. Dave was that in certain circumstances, it would be desirable and appropriate if appellate authority affords personal hearing. Had personal hearing been afforded in the instant case, appropriate order could have been passed in the matter and the petitioner might not have been constrained to approach this court. He also invited our attention in this connection to a recent decision of this Court in *Gujarat Steel Tubes Ltd. Vs. Union of India* delivered in Special Civil Application No. 2281 of 1999 decided on 2nd July, 1999. After considering relevant decisions, we observed as under :-

"Mr. JM Patel, learned counsel for the respondents, on the other hand, submitted

that ordinarily in exercise of extra-ordinary powers under Article 226 of the Constitution, this Court would not pass the order directing the appellate authority not to insist for pre-deposit of the amount which is a statutory requirement. Similarly, this Court would also not direct the appellate authority to afford personal hearing in light of the law laid down by the Hon"ble Supreme Court in Union of India vs. M/s. Jesus Sales Corporation, JT 1996 (3) SC 597 and followed by the Division Bench of this Court in D.C.W. Limited Vs. Commissioner (Appeals), .

So far as non-consideration of trade notice is concerned, obviously there is non-consideration of the same as there is no mention in the stay order impugned in this petition. It also appears that this is a third round in which the petitioner has to approach this Court. In these circumstances, it cannot be said that the grievance voiced by the petitioner against the appellate order is misconceived or totally ill-founded. In the facts and circumstances, however, we are of the opinion that it would be proper if we set aside the order passed by the appellate authority by directing him to reconsider the stay application and to pass reasoned order thereon. Regarding personal hearing, it may not be proper to direct the appellate authority to afford personal hearing in the light of the law laid down by the Hon"ble Supreme Court as well as this Court, but the appellate authority will consider even that prayer and take appropriate course particularly when a grievance is made that attention of the appellate authority was invited to trade notice and yet no mention is made in the appellate order by him."

7. In the facts and circumstances of the case, in our opinion, it would not be proper to direct the authority to grant personal hearing in the light of the law laid down by the Apex Court. At the same time, however, it would be proper when a grievance is made that in spite of settled legal position, the appellate authority does not apply its mind to the relevant decisions on the point and mechanically passes orders on stay application, if the appellate authority considers to grant personal hearing. The appellate authority should bear in mind that there is no bar or prohibition of granting personal hearing and it is expected of the authority to consider the prayer of personal hearing and to take appropriate decision in the light of the facts and circumstances of the case.

8. In the result, petition deserves to be allowed and is accordingly allowed. Appellate authority is directed to decide the matter afresh in accordance with law. Till the application for stay is decided, no coercive recovery will be effected against the petitioner. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, no order as to costs.