
(2008) 12 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 12645 of 2008

Samartha Banking Machines Pvt. Ltd. and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 12 GUJ CK 0029

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Advocate : D.V. Parikh, for Petitioners 1 - 2, for the Appellant; Harin P. Raval, Assistant Solicitor General of India for Respondents 1, 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

R.M. Doshit, J.—Rule returnable today. Mr. Raval appears for and waives service of notice of rule on behalf of the respondent Union of India.

2. In the present petition filed under Article 226 of the Constitution of India, the petitioner, an industrial unit, challenges the orders dated 7th May, 2008 and 26th August, 2008 made by the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad [hereinafter referred to as "the Tribunal"] in stay application Nos. 231 and 232 of 2008 and in application Nos. E/Modf./760 & 761/08.

3. By impugned order dated 7th May, 2008 made on stay application Nos. 231 & 232 of 2008, the Tribunal entertained the central excise appeal Nos. 231 & 232 of 2008 preferred by the petitioner on condition that the petitioner deposited a sum of Rs. 18,00,000/- towards duty within a period of 8 weeks from the date of the order. The said order was made in absence of the learned advocate representing the petitioner. The petitioner, therefore, took out application for modification Nos. E/Modf./760 & 761/08. The said applications came to be

rejected by the impugned order dated 26th August, 2008.

4. Learned advocate Mr. Parikh has appeared for the petitioner. He has taken us through the merits of the appeals to impress the Court that in the appeals before the Tribunal the petitioner has an arguable case. Ordinarily, in such cases, the Tribunal would grant unconditional stay. However, as the learned advocate could not remain present before the Tribunal, the Tribunal had no occasion to examine the matter on merits with the assistance of the learned advocate. The application for modification made by the petitioner ought to have been considered by the Tribunal and the learned advocate ought to have been given opportunity of hearing on merits of the stay application.

5. Learned Assistant Solicitor General, Mr. Raval has appeared for the respondent Union of India. He has contested the petition.

6. On the facts and in the circumstances of the case, we allow this petition. The impugned order dated 7th May, 2008 made on application Nos. 231 & 232 of 2008 and the order dated 26th August, 2008 made on modification application Nos. E/Modf./760 & 761/08 are quashed and set aside. The stay application Nos. 231 & 232 of 2008 are restored for hearing and decision on merits afresh.

7. This order is made on condition that the petitioner, within two weeks from today, deposits a sum of Rs. 5,00,000/- with the respondent No. 2. The application for stay Nos. 231 & 232 of 2008 will stand restored only after the aforesaid sum of Rs. 5,00,000/- is deposited, as directed. It is further directed that the learned advocate will remain present before the Tribunal, will not ask for avoidable adjournment and will conduct the matter before the Tribunal on the date specified by the Tribunal.

8. Rule is made absolute in the above terms. Parties will bear their own cost.