(2005) 11 AP CK 0075

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24678 of 2005

Saptagiri Cements Pvt. Ltd. APPELLANT

Vs

CESTAT RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) 190 ELT 435

Hon'ble Judges : S. Ananda Reddy, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : K. Vijay Kumar, for the Appellant; A. Rajashekar Reddy, ASG, for the Respondent

Judgement

B. Sudershan Reddy, J.—We have heard the learned counsel for the petitioner and the learned Assistant Solicitor General and at their request, the matter is taken up for final disposal at the stage of admissions. Rule nisi.

2. The Customs, Excise and Service Tax Appellate Tribunal, vide its Stay Order No. 324-327 of 2005 dated 19-04-2005 directed the petitioner to pre-deposit a sum of Rs. 30 Lakhs within a period of four months to cover up the admitted liability by taking into consideration the financial hardship pleaded and also the amount of Rs. 10 Lakhs deposited.

3. The petitioner pre-deposited Rs. 10 Lakhs after the Order dated 19-04-2005 and filed an application for modification of the stay order dated 19-04-2005 with a prayer to grant them waiver of the balance amount of Rs. 20 Lakhs. It was specifically pleaded there their factory is closed and there is no production as such and they have no means and not in a position to pre-deposit the balance amount in terms of the orders of the Tribunal. The Tribunal having held that there is no fresh ground to recall or modify the order rejected the application filed by the petitioner vide its order dated 23-08-2005.

4. We have requested the learned Assistant Solicitor General to ascertain as to

whether the petitioner - Cement Industry is not working at present, pursuant to which the learned Assistant Solicitor General made available a copy of the letter dated 21-11-2005 addressed to him by the Joint Commissioner of Customs and Central Excise, Visakhapatnam - I Commissionerate. It discloses that the petitioner - Industry is not working at present "as the same is closed since June, 2003". This one fact undoubtedly may disclose the severe financial constraints and the financial hardship being faced by the petitioner on account of which it could not make necessary pre-deposit in terms of the Stay Order dated 19-04-2005 passed by the Tribunal. Normally, this Court in exercise of the jurisdiction under Article 226 of the Constitution of India does not interfere with such interlocutory order which creates any irreversible situation but having regard to the facts and circumstances and more particularly, the fact that the industry is closed ever since June, 2003 due to which the petitioner is not in a position even to make the pre-deposit, we consider it appropriate to modify the impugned order passed by the Tribunal and accordingly direct the Tribunal to hear the appeal preferred by the petitioner on merits and dispose of the same as expeditiously as possible within a period of four months from the date of receipt of a copy of the order.

5. In the result, Stay Order 324 - 327 of 2005 dated 19-04-2005 is modified and the petitioner is granted waiver of the balance amount of Rs. 20 Lakhs that was required to be pre-deposited. The Tribunal shall not insist for the pre-deposit of the balance amount of Rs. 20 Lakhs but hear the appeal on merits and dispose of the same in accordance with law within the above stipulated period.

6. The Writ Petition is accordingly disposed of.

