(1991) 04 MAD CK 0048

In the Madras High Court

Case No : Writ Petition No. 4831 of 1991

S.B. Steel Industries — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 10-04-1991

Acts Referred:

Central Excise Rules, 1944 — Rule 230
Central Excises and Salt Act, 1944 — Section 35F

Citation : (1992) 57 ELT 224

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Shri R. Thiagarajan, for Mr. T. Muthuraman, for the Appellant; Shri J. Jayachandran, A.C.G.S.C., for the Respondent

Judgement

Kanakaraj, J.

1. Admit. Mr. Jayachandran, Additional Central Government Standing Counsel takes notice.

2. The Collector of Central Excise, Coimbatore (third respondent) passed an order on 21-11-1989 holding that the petitioner had wrongly utilised

the Notification No. 208/83 and after notice to the petitioner, he held that a sum of Rs. 2,99,502.94 is payable by him as duty and he also levied a

penalty of Rs. 10,000/-. Against the said order, the petitioner has filed an appeal before the second respondent-Tribunal and by order dated 8-10-

1990, the Tribunal directed the petitioner to pay a sum of Rs. 1,50,000/- as a condition for waiving the pre-deposit of the balance amount. The

petitioner did not comply with the order before the prescribed date, namely 31-12-1990 and hence, the appeal was dismissed. Consequently, the

Superintendent of Central Excise has informed the petitioner by his letter dated

14-3-1991 that if the duty amount as per the order of the Collector of Central Excise dated 21-11-1989 is not paid, action will be taken under Rule 230 of the Central Excise Rules, 1944. It is under these circumstances, this writ petition has been filed to quash the order of the 4th respondent-Superintendent of Central Excise dated 14-3-1991 and to direct the Tribunal to have the appeal restored.

3. Though this writ petition is not properly framed, I am not inclined to dismiss the same on technical grounds. The grievance of the petitioner is that the petitioner could not pay the sum of Rs. 1,50,000/- as ordered by the Tribunal on or before 31-12-1990. The question now is, whether any relief can be given to the petitioner in respect of the payment of the pre-deposit as per the order of the Tribunal dated 8-10-1990. Learned Counsel for the Revenue strongly opposed any such concession because the Tribunal had taken note of the relevant circumstances before ordering payment of Rs. 1,50,000/-.

4. A perusal of the order shows that the Tribunal had taken not of the net profit of the petitioner-Company as well as the sundry debts payable to the petitioner-Company before directing payment of a sum of Rs. 1,50,000/-. However, having regard to the plea of the petitioner that he is unable to pay the entire amount of Rs.1,50,000/-, but he had paid a sum of Rs. 50,000/- on two different dates, namely, Rs. 30,000/- on 27-12-1990 and Rs. 20,000/- on 6-3-1991, I am inclined to show some indulgence to the petitioner. Accordingly, I direct that if the petitioner deposits a further sum of Rs. 50,000/- (Rupees fifty thousand only) on or before 31-7-1991, the appeal before the Tribunal shall stand restored and the Tribunal will dispose of the appeal on merits. Depending upon the deposit of the said sum on or before 31-7-1991, the proceedings of the 4th respondent-Superintendent of Central Excise dated 14-3-1991, shall stand stayed. If no deposit is made on or before 31-7-1991, it is open to the respondent to proceed with the recovery proceedings. This writ petition is ordered accordingly. There will be no order as to costs.