
(1991) 07 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 859 of 1991

Shakti Biscuit Mfg. Co.

APPELLANT

Vs

CEGAT and ACCE

RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1992) 40 ECR 445

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;R.B. Mehrotra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—This writ petition is directed against the order of the CEGAT, disposing of an application, filed under proviso to Section 35F.

2. According to the order appealed against, the petitioner was made liable to pay a penalty of Rs. 20,000/- and duty of Rs. 2,33,391/-.

3. A reading of the Tribunal's order discloses that the petitioner did not choose to advance any argument on the question of prima facie case, but confined his argument only to the liquidity position of the petitioner Company. He submitted that it was a sick unit. In support of his contention, he merely filed the balance sheet for the year, ending 31st March, 1989. No other material was filed. The Tribunal held that the said balance sheet does not establish that the petitioner Company is a sick unit or its liquidity position does not permit, it to deposit the said duty. Accordingly, it directed the petitioner to deposit the amount of duty within 12 weeks from the date of the said order. So far as the penalty is concerned, it was stayed.

4. In this writ petition certain material is sought to be brought to our notice, indicating that the petitioner Company is a sick company. Since the said material was not placed before the Tribunal, we are not inclined to look into it.

5. Be that as it may, having regard to the fact that the appeal before the Tribunal was the first appeal and also having regard to particular facts and circumstances of this case, we dispose of the writ petition with the following direction.

6. If the petitioner deposits a sum of Rs. 1,60,000/- within one month from today and furnishes security (other than cash or bank guarantee) to the satisfaction of CEGAT for the balance amount, namely, Rs. 73,391/-, within same period, the CEGAT shall entertain the appeal and dispose it of in accordance with law. In default of compliance of the above condition, the writ petition stands dismissed. No costs.