(1999) 09 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 1817 of 1999

Sharda Ispat Limited APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-09-1999

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35, 35F

Citation : (2000) 67 ECC 361 : (1999) 85 ECR 309 : (1999) 114 ELT 389

Hon'ble Judges : D.D. Sinha, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : V.C. Daga and S.N. Kapoor, for the Appellant; R.S. Sundaram, for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, J.—Rule returnable forthwith. Mr. Sundaram waives service for respondents. By consent, rule is called out and heard.

2. The petitioner was issued a show cause notice by the second respondent on 27/30-1-1995. The show cause notice was replied by the petitioner on 12-5-1995. The second respondent made an order on 27-12-1997 against the petitioner. The petitioner filed appeal No. 174/NCP/98 on 25-3-1998 before the Appellate Commissioner of Central Excise u/s 35 of the Central Excise Act, 1944. On the same day, petitioner also moved an application for staying the order passed by second respondent and waiver of pre-deposit requirement under the said section. On 22-4-1999, the third respondent made an interlocutory order rejecting prayer for stay of the recovery and dismissed the application for waiver of the pre-deposit. Being aggrieved thereby, the petitioner moved this writ petition.

3. The petition came up for admission on 7-5-1999, on which day the Division Bench issued notice returnable within six weeks and granted ad interim order in terms of prayer clause c(i) which reads as under:

"(c) that pending the hearing and final disposal of the petition :

(i) the operation of the order of third respondent dated 22-4-1999 be stayed."

Despite the above ad interim order made by this Court, it is the petitioner''s grievance that the Appellate Commissioner has, on a non-working Saturday, dismissed the appeal itself by his order dated 15-5-1999 without even hearing the petitioner.

4. We have perused the record and heard learned Counsel on both sides. Mr. Sundaram strenuously tried to defend the order dated 15-5-1999 made by the Appellate Commissioner, but we are afraid that the order is beyond defence. The least the Commissioner could have done was to take cognizance of the ad interim order dated 7-5-1999 (which we are told, was served on the Department on 12-5-1999) and at least give hearing to the petitioner before dismissing the appeal for non-compliance with the pre-deposit requirement. Hence, we are satisfied that the order dated 15-5-1999 is erroneous and needs to be interfered with.

5. As far as application for waiver of the pre-deposit is concerned, here again we notice that the Commissioner''s order dated 22-4-1999 is mechanical and does not indicate any exercise of discretion on his part. Section 35F of the Central Excise Act, 1944 does not provide that an appeal shall automatically be dismissed for non-compliance of pre-deposit requirement. There is a discretion vested in the Commissioner of Appeals and if he is of the opinion that deposit of duty demanded or penalty levied would cause undue hardship to the appellant, then he may dispense with such deposit subject to such conditions as he may deem fit to safeguard the interest of the revenue. Perused of the impugned order dated 22-4-1999 does not indicate that there was any such exercise carried out by the Commissioner. The petitioner addressed two issues - one with regard to jurisdiction of the Authorities to prescribe the date beyond which the concerned documents could be termed as valid documents and second, with regard to petitioner''s financial stringency. We find hardly any discussion worth the name on either issue in the impugned order dated 22-4-1999. Hence, we are satisfied that this order also needs to be interfered with. Hence, the following order :

The impugned orders dated 22-4-1999 and 15-5-1999 made by the Commissioner (Appeals), Customs and Central Excise, Bhopal are hereby quashed and set aside. Appeal No. 664-CE/BPL/99 is remanded to the Commissioner (Appeals), Customs and Central Excise, Bhopal for hearing and disposal in accordance with law. Mr. Sundaram says that it would be possible to dispose of the appeal on merits within a period of one month from today. If that be so, we do not see why pre-deposit should be insisted for such period of one month since matter is already pending in this Court for a long time. The petitioner shall cooperate with the Commissioner in disposing of the appeal on its merits.

6. The rule is made absolute in the aforesaid terms. No order as to costs.

