(2002) 07 RAJ CK 0122

In the Rajasthan High Court

Case No : Civil Writ Petititon No. 4711 of 1989

Shree Rajasthan Syntex Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 28

Citation : (2003) 90 ECC 893 : (2003) 111 ECR 407 : (2003) 156 ELT 647

Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J

Bench : Division Bench

Advocate : Vineet Kothari, for the Appellant; N.M. Lodha, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—By way of this writ petition under Article 226 of the Constitution of India, the petitioners seek direction against the respondent Union of India to waive the interest payable by the petitioners in respect of the amount in dispute, in Writ Petitions No. 2259/83, 2420/83, 2704/83, 2421/83, 2258/83 and 2703/83 of the Bombay High Court. It is prayed that the respondents be directed to decide the petitioners'' claim for waiver of interest as per Trade Notice No. 47/86-C.E. in the same manner in which it has been settled in relation to M/s. Shruti Synthetics Ltd., Udaipur and further, respondents be directed not to compel the petitioners to pay the interest.

2. The facts in brief are that the petitioners Shri Rajasthan Synthetics Ltd., a company registered under the Company Act is carrying the business of manufacturing man-made fibre yarn and other synthetic blended yarn. In the year 1983 the Central Government issued the exemption Notification Nos, 38/93 and 39/83, dated 1-3-1983 exempting the imports of man-made fibres from a part of the customs duty. The petitioners and M/s. Shruti Synthetics Ltd. both imported man-made staple fibre from Bombay Port. The duty was levied on the said imports under Heading 56.01 of the First Schedule of the Customs Tariff

under Notification Nos, 39/83 and 38/83, dated 1-3-1983 on duty in excess of the 40% ad valorem on viscose fibre and 100% polyester fibre respectively was payable in respect of the imported goods which, inter alia, covered viscose and polyester staple fibre. The Customs authorities insisted to pay the auxiliary and additional duty, in excess of the limits prescribed by the exemption notification. The petitioners and M/s. Shruti Synthetics Ltd., both filed writ petitions in the Bombay High Court challenging the authority of the Government to collect auxiliary and additional duty in excess of the limits prescribed by the said notification dated 1-3-1983. The petitioners filed six writ petitions in the Bombay High Court. M/s. Shruti Synthetics Ltd. also filed two writ petitions. The Collector, Central Excise and Customs, Jaipur issued a Trade Notice No. 47/86-C.E. The said Trade Notice was issued as per the Scheme for compounding of offence of settlement of court cases relating to Customs and Central Excise issued by the Government of India. The benefit of the Scheme was available to :-

(i) the manufacturers, importers who had paid lower amount of duty in respect of Excise clearance or on import of cargo up to 31st December, 1984.

(ii) cases relating to the post-manufacturing expenses.

(iii) cases pertaining to the Central Excise and Customs duties pending in Courts other than post-manufacturing expenses.

3. The parties desiring to settle their cases under the Scheme were required to file declaration owning the liabilities and indicating the amount paid by them on or before 31st December, 1986. The petitioner-company filed the declaration in March, 1987. The application filed by the M/s. Shruti Synthetics on 19-12-1986 was accepted by the Collector of Customs, Jaipur on certain conditions. The petitioners also approached to the Collector, Central Excise, Jaipur and requested to settle the cases pending in the Court in accordance with the Trade Notice dated 28-8-1986. While the said application was pending before the authorities of the department the writ petitions filed by M/s. Shruti Synthetics pending before the Bombay High Court were disposed of, in view of the fact that, relief was granted by the department under the Trade Notice No. 47/86. However, the relief was refused to the petitioner by the department on the ground that the petitioners did not file the appropriate application before the cut of date i.e. 31-12-1986.

4. The Counter affidavit has been filed by Shri M.P. Meena, Assistant Collector of Central Excise, Jaipur. It is averred that on the writ petitions filed by the petitioners the Bombay High Court granted stay on the condition that it shall be liable to pay 1% interest duty in case the writ petition is ultimately dismissed. As the petitioner did not file the application and made declaration as required under the Scheme before the cut of date i.e. 31-12-1986 on 7th July, 1998 the Bombay High Court directed the petitioners to pay the differential duty along with interest at 12% from the date of clearance of the goods till realisation of the differential duty. The petitioner preferred an appeal against the said order before the

Division Bench of the Bombay High Court. On 1-11-1988, the Division Bench of Bombay High Court directing the petitioners to pay the differential duty and restrained the respondents from taking coercive steps to recover the interest. The differential duty was paid by the petitioner as per the directions of the Bombay High Court. The recovery of interest was stayed for a period of six months by order dated 16-11-1989. The said indulgence was given with a view to given opportunity to the petitioner to make representation to the appropriate authorities for waiving of interest under the Amnesty Scheme. The Collector of Customs vide letter dated 2nd February, 1989 decided the matter and informed the petitioners that the petitioner-company was not entitled to the benefit of the Scheme as it did not file the declaration on or before 31st December, 1986.

5. The petitioner-company preferred an application for interim relief before the Bombay High Court, which was dismissed by order dated 13-6-1989 with a direction to deposit the amount of interest within a period of 8 weeks. Accordingly, the petitioner was directed to deposit the amount of interest under communication dated 7-7-1989 of the Assistant Collector of Central Excise, Udaipur. The petitioners failed to deposit the amount and informed the Assistant Collector under communication dated 4th August, 1989 that the petitioner-company was filing the appeal before the Supreme Court against the order of the Bombay High Court. A further request was made that till the appeal was preferred by them the recovery should not be effected.

6. It is contended by Mr. Vineet Kothari, learned Counsel for the petitioner that the petitioner-company is entitled to be treated at par with a case of M/s. Shruti Synthetics. The application of the M/s. Shruti Synthetics has been accepted by the respondents for settlement out side the Court as per the communication of the Additional Collector of Customs, Jaipur, dated 19-12-1989. It is further submitted that the respondents authorities has arbitrarily rejected the petitioners application for settlement on the erroneous ground that the petitioner submitted the application after the cut of date. It is submitted that the case of the petitioners is required to be considered under Para 4 of the Trade Notice, which does not provide for cut of date.

7. On a careful consideration of the matter, we are of the view, that the petitioner is not entitled to any relief. The Division Bench of the Bombay High Court on an interim application by order dated 1-11-1988 directed the petitioner to pay the differential duty and restrained the respondent from taking coercive steps to recover the interest. The differential amount was paid by the petitioner as per the direction of the High Court. Subsequently the Bombay High Court passed another order dated 16-11-1988 by which recovery of the interest was stayed for a period of six months, in order to enable the petitioner to make representation to the appropriate authority for waiver of interest. The representation was rejected by the Department on the ground that the petitioner was not entitled to any relief under the Amnesty Scheme as the declaration was submitted beyond the cut of date. The petitioner filed another interim application

in the pending appeal being No. 519/1989 which was rejected by the order of the Bombay High Court dated 13-6-1989 with a direction to the petitioner to deposit the amount of interest within eight weeks. In view of the order of the Bombay High Court the department under communication dated 7-7-1989 directed the petitioners, to deposit the amount, but the direction has not been complied with. Thus it is evident that relief claimed in the instant writ petition, has been declined by the Bombay High Court on interim application. The petitioner is also guilty of not complying with the directions given by the Bombay High Court with respect to deposit of the amount within the provided time. The petitioner after having failed before the Bombay High Court and having not complied with the direction has approached to this Court. Apparently the petitioner is abusing the process of the Court. In our view, the petitioner is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

8. Even otherwise on the merit, on careful consideration of the Amnesty Scheme and the Trade Notice No. 47/86 placed on record as Annexures 1 and 2, it appears that the Scheme clearly provides a cut of date i.e. 31-12-1986. Admittedly, the petitioner did not submit the application on or before 31st December, 1986. The reference to Para 4 of the Scheme by the petitioner is wholly erroneous. The Scheme provides for only three categories of cases. The additional para even if read as Para 4, states that "in Central Excise cases other than those relating to PEM and in Customs cases pending in Court, may be considered for settlement on payment of amount." A reading of the notification clearly provides that for all the contingencies the cut of date is 31-12-1986. Thus, the case of the petitioner is distinguishable from the case of M/s. Shruti Synthetics. In the said case the application was made before the cut of date.

9. Consequently, we find no merit in this writ petition. The writ petition is dismissed.