

(1993) 09 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 7050 of 1993

Standard Pencils Pvt. Ltd.

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Citation : (1993) 68 ELT 736

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Judgement

1. By consent of parties the writ petition itself has been taken up for final disposal at the time when the miscellaneous petitions were heard. The

petitioners are engaged in the manufacture of cosmetics and toilet preparations like "eye-brow pencils, bindhi pencils, eye shadow, eye liners as

well as other types of pencils. " On the basis of certain inspection, the first respondent gave Show Cause Notice charging the petitioners for having

cleared dutiable goods like eye-brow pencils in the guise of kum-kum pencils or black pencils which are not dutiable. After considering the

explanation and the materials available with the first respondent, the order was passed demanding duty to the tune of Rs. 1,47,10,803/-, a

redemption fine in respect of the goods confiscated and a penalty of Rs. 35,00,000/- on the writ petitioner. This apart, penalties were also levied

on the Directors individually. The petitioner filed five stay applications and also applications for waiver of the pre-deposit as a condition for hearing

the appeals filed by them. In and by the order of the 2nd respondent dated 2-1-1993, the Tribunal directed the petitioners to deposit a sum of Rs.

50,00,000/- for the purpose of hearing the appeals. On such deposit within a

period of 12 weeks from the date of the receipt of the order, the remaining amount and penalties were directed to be stayed. It was made clear that the non-compliance of direction would result in the dismissal of the appeal. The appeal was adjourned to 24-5-1993. It is this order which is sought to be quashed in the present writ petition. The writ petition was admitted on 15-4-1993 and interim stay was granted on the same date. The respondents have filed a petition to vacate the said order of stay.

It is at this stage having regard to the narrow canvas within which the writ petition lies, the parties agreed to have the writ petition disposed of.

2. Mr. C. Natarajan, learned counsel for the petitioners, seeks to point out certain prima facie errors in the order of the first respondent to question

the finding of the Tribunal that the petitioners have no prima facie case in the appeal. The first respondent had determined the quantity of "Eye-

brow" pencils produced in the factory relying upon the raw materials consumed during the relevant period. The total duty determined by the first

respondent is based on a quantity of [Rs.] 1,13,825/-gross of "Eye-brow" pencils. But, in the show cause notice, there is reference only to a

quantity of [Rs.] 76,299/-. The actual clearance from the factory was found to be only [Rs.] 18,257/-. The quantity sent to Maharashtra Pencil

Factory was found to be [Rs.] 22,000/-gross. In other words it is pointed out that the correct calculation would only lead to a duty liability of Rs.

73,00,000/-. The argument on merits has been noticed by the Tribunal. The Tribunal considered the case of the petitioners in juxtaposition with the

arguments of the revenue wherein it was pointed out that for the period from 1-4-1986 to 3-12-1990 a proportional quantity of raw-materials was

arrived at and taken into consideration for the quantity of Eye-brow pencils produced during that period. While observing that the case involved

multiplicity of facts and points of law and that the same can be gone into only at the time of the disposal of the case, the Tribunal proceeded to say

that they were not convinced that a strong prima facie case existed in favour of the petitioners.

3. In considering the argument of Mr. Natarajan, I must point out that a prima facie case means a case in which there is some evidence in support

of the charge and which will stand unless it is displaced. In a case like this where large-scale irregularities have been committed, certain amount of

best of judgment has to be resorted to. The party who has committed the irregularities has necessarily got to suffer such assessments based on

probabilities. It is no use complaining that the assessment is not mathematically correct. Looked from this angle, the argument of Mr. Natarajan

cannot be fully accepted.

4. The second aspect of the case is with reference to the financial position of the petitioners' Company. It is not disputed that the petitioners'

Company is a profit-making concern. They had themselves made a provision for payment of excise duty for the year ending 31-3-1992 to the

tune of Rs. 1,47,10,803/-. But the petitioners complained that they had no hard cash and liquidity position was very difficult. The Tribunal then

proceeded to apply the judgment of this Court in *Aurelec Trust Vs. Superintendent of Central Excise*, and directed the payment of Rs.

50,00,000/- as a condition for waiving the pre-deposit of the balance. One has to find out whether the petitioner will suffer undue hardship if he is

directed to deposit the entire amount and if so, relief can be granted in respect of the deposit of the entire amount to such extent as the Court finds

necessary. While doing so, the court has also to take note of the interest of the revenue and make sufficient safe-guards.

5. There is also an argument that if the appellant is directed to deposit a huge amount, it will practically deny him the opportunity of having the

appeal heard on merits. This is because if the amount is not deposited, the appeals will not be heard on merits. It is one thing to reject a stay

application and totally another to deny waiver of pre-deposit. However big a concern or Company may be, it will certainly be difficult to deposit a

huge sum of Rs. 50,00,000/- unless probably the concern decides to sell its assets. That could not be the object of the said provision of law.

Taking note of all the circumstances, I am inclined to direct the petitioners to deposit a total sum of Rs. 30,00,000/- in two instalments, one on or

before 15-11-1993 and the balance on or before 31-12-1993. The order of the Tribunal will be modified to the above extent, and the writ

petition fails and is disposed of on merits.