(2005) 03 MAD CK 0144

In the Madras High Court

Case No : Writ Appeal No. 478 of 2005

Swetha Engineering Limited — APPELLANT

Vs

The Customs Excise and Gold Control Appellate Tribunal — RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2005) 03 MAD CK 0144

Hon'ble Judges : Markandey Katju, C.J;Prabha Sridevan, J

Bench : Division Bench

Advocate : D. Trilokchand Chopra, for the Appellant; K. Veeraraghavan, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, C.J.—This writ appeal has been filed against the impugned order of the learned single Judge dated 17.1.2005.

2. We have heard the learned counsel for the parties and perused the records. A perusal of the impugned order of the learned single Judge shows that the Tribunal after hearing the counsel for the petitioner had passed an order directing the petitioner to deposit a sum of Rs. 3,00,000/- (Rupees three lakhs only) within three months and waived the balance duty payable and granted a stay of recovery of the balance amount till the disposal of the appeal. That order was challenged before the learned single Judge, but the petition was dismissed. Hence this appeal.

3. Learned counsel for the appellant contended that the appellant had approached the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985. That application was rejected by the BIFR but the appeal is pending before the AAIFR. He has submitted that the condition in the impugned order dated 17.1.2005 is in violation of Section 22 of the Act.

4. The matter is concluded by the decision of the Supreme Court in Metal Box India Ltd. Vs. Commissioner of Central Excise, Mumbai, wherein the Supreme Court has held that payment of pre-deposit covered u/s 35F of the Central Excise Act, 1944 does not fall under any of the enumerated categories in Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. Hence the protection of Section 22 is not available. Following the said decision this writ appeal is dismissed. However one month further time is granted to the appellant from today to make the pre-deposit as directed by the Tribunal. No costs. W.A.M.P. No. 864 of 2005 is dismissed.