(1986) 12 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 493 of 1986

Thermax Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-12-1986

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B

Citation : (1987) 11 ECR 152 : (1987) 27 ELT 68

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The petitioners had applied for registration of contract before the Assistant Collector of Customs, Bombay. The application was made as the petitioners being importers were desirous to avail the benefit of Notification No. 71/85. The petitioners imported power project (including gas turbines) and were claiming advantage of Notification in respect of payment of duty. The Assistant Collector of Customs rejected the application by order dated June 5, 1985. The petitioners filed appeal before the Collector of Customs (Appeals) Bombay and the appeal was allowed and the Assistant Collector was directed to forthwith re-assess to customs duty on the imported boilers and the accessories under heading 86/66 of the Customs Tariff in terms of Notification No. 71 dated March 17, 1985. The Department did not file any appeal against the order of appellate authority within the stipulated period, nor did bother to carry out the directions of the Collector of Customs and refund the excess duty recovered from the petitioners.

The inaction on the part of the respondents gave rise to the filing of the petition on February 28, 1986. The petitioners seek writ of mandamus directing the respondents to forthwith assess the consignments imported by the petitioners and covered by bills of entry, copies of which are annexed as Exps. ''H'' and ''I'' to the petition, and make the requisite refund. The petition was admitted on April 28, 1986 but interim relief of refund, as calculated by the petitioners, was not granted. The petitioners thereupon filed Appeal No. 384 of 1986 and the Division

Bench passed order on May 2, 1986. In the meanwhile on April 3, 1986, the Department had filed Appeal No. 612 of 1986 before the Tribunal and that is still pending. The Division Bench of this Court directed that the final order of the Tribunal in appeal would govern the consignments in respect of which the petitioners are seeking the relief.

It is required to be stated at this juncture that the Department has filed appeal before the Tribunal after the expiry of period of limitation and delay in filing the appeal was condoned by the Tribunal. The Department also sought stay of the implementation of the order of the Collector, but the Tribunal declined to grant order of stay, with the result that it is necessary for the Department to carry out the directions of the appellate authority.

2. Shri Kotwal, learned counsel appearing on behalf of the petitioner, submitted that in view of the fact that the Tribunal had declined to grant stay of the enforcement of the order of the appellate authority, it is necessary for the Department to give effect to the order of the appellate Collector and pass fresh order of assessment and made refund of the excess recovered from the petitioners. It is obvious that the Department is bound to carry out the directions of the appellate Collector and there is no explanation why such exercise was not undertaken inspire of refusal of stay by the Tribunal. In these circumstances, it is necessary to issue writ against the respondents directing them to give effect to the order of the Appellate Collector passed on July 16, 1985 and refund the amount to the petitioners within a period of two weeks from today. The Department will take into account the calculations prepared by the petitioners, the copies of which are annexed as Exps. "D" and Exps. "G" to the petition. In case, the appeal preferred by the Department to the Tribunal succeeds, then the petitioner undertakes to refund the amount which the Department would pay to the petitioner within two weeks from today subject to the right of the petitioner to challenge the order of the Tribunal in permissible forum.

3. Accordingly, rule is made absolute and the respondents are directed to give effect to the order of appellate Collector passed on July 16, 1985 within 2 weeks from today and make the requisite refund to the petitioner. In case, the refund is not granted within two weeks from today, then the Department shall also pay interest on the amount of refund at the rate of 15% per annum from today till the date of actual refund. The respondents shall pay the costs of the petition.

