(1988) 01 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No. 3919 of 1987

Thermo Plastic Industries APPELLANT

Vs

U.O.I. RESPONDENT

Date of Decision : 06-01-1988

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1992) 43 ECR 733 : (1991) 51 ELT 629

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Judgement

1. Rule, returnable forthwith Mr. Parekh appears for the respondents and waives service.

2. Against the impugned order dated 23rd December, 1986 at Exhibit E to this petition, the petitioners preferred appeal to the Collector of Central Excise (Appeals). Along with the appeal, the petitioners had also filed an application for stay of the impugned order under appeal. This was on 28th September, 1987. Even while the application for stay was pending along with the appeal before the Collector of Central Excise, the Assistant Collector directed the petitioners by his letter dated 30th October, 1987 to deposit the impugned demand, in default whereof coercive measures were threatened.

3. Now, it is difficult to appreciate the threat of coercive measures in default of deposit particularly when appeal against the impugned demand has been filed and pending and all the more when an application for stay has already been made and is pending before the Appellate Authority. As indicated, the said application has been kept pending from September, 1987. Considering all the facts and circumstances and the grounds mentioned in the said stay application which are substantial grounds in favour of an order of stay, this, in my view, is a fit case where the condition of pre-deposit should be dispensed with and the Appellate should be directed to hear and decide the petitioner''s pending appeal on its own merits and in accordance with law.

4. Hence order : This petition is allowed. The direction in impugned letter dated 3rd October, 1987 (Exhibit D) is quashed. The Collector of Central Excise (Appeals) is directed to bear and decide the petitioners'' pending appeal against order dated 23rd December, 1986 (Exhibit B) of the Assistant Collector of Central Excise, Division E, Bombay-I, is expeditiously as possible but without insisting upon deposit of the impugned amount as pre-condition for hearing of the appeal.

5. Rule is made absolute in terms aforesaid but, in the circumstances, with no order as to costs.