(1984) 04 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ petition No. Nil of 1984

U.P. Lamination APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 19-04-1984

Acts Referred:

Central Excise Rules, 1944 — Rule 230
Central Excises and Salt Act, 1944 — Section 35

Citation : (1985) 21 ELT 69

Hon'ble Judges : S.K. Dhaon, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.K. Dhaon, J.—The petitioner by means of an application invoked the benefit of the proviso to Section 35 of the Central Excises and Salt Act (hereinafter referred to as the Act). The appellate Tribunal on order directing that instead of making cash deposit, the petitioner may deposit in cash 25% of the demand adjudged against it and furnish to the satisfaction of the concerned collector of Central Excise, bank guarantee for the balance amount within a period of two months. In pursuance of this order the petitioner it appears approached the State Bank of India, Unnao with a request that it may give a bank guarantee for a sum of Rs. 2,50,000/-. In reply the bank pointed out to the petitioner that the following guarantee should be furnished by the petitioner to the bank to enable it (the bank) to proceed further with the request of the petitioner to issue a bank guarantee :

1. Margins money.

2. Cash margin equivalent to security.

3. Title deeds in the name of firm or in the name of any partner(s)/ proprietor certificate.

4. Guarantee of two persons known to the Bank.

3. Proforma on which the guarantee is required with full particulars.

2. In reply the petitioner asserted that it was not in a position of either deposit a sum of Rs. 2,50,000/- or to deposit any margin money. Finally on 30th January, 1984, the bank informed the petitioner that it was unable to issue a bank guarantee without the petitioner furnishing any security margin. Faced with that situation the petitioner made an application to the appellate Tribunal for the modification of its earlier order. This application was rejected by the appellate Tribunal by its order dated 27th March, 1984. Therefore, on 16th April, 1984, the petitioner was served with a notice by the Superintendent, Central Excise Range Unnao directing it (the petitioner) to comply with the order dated 23rd Dec., 1983 passed by the Appellate Tribunal within three days. The notice also indicated that if the petitioner failed to do so, recovery proceedings against it will be initiated under Rule 230 of the Central Excise Rules, 1944. The petitioner has approached this court for issuing an appropriate direction, order or writ.

3. I have heard the learned chief standing counsel for the Union of India on behalf of the respondents 1 to 3. In my opinion the Appellate Tribunal in its order dated 27th March, 1984 has overlooked the crucial fact that the State Bank of India is categorical in its stand that unless and until the petitioner furnished margins money in cash the question of the bank issuing a bank guarantee to the petitioner does nor arise. Rather it has been the consistent case of the petitioner that he is not in a position to make any deposit in cash. It appears that the Appellate Tribunal was swayed by the fact that apart from making the cash deposits as required by the State Bank of India the petitioner did not care to comply with the other conditions enumerated by the bank. The failure for the appellate tribunal to take note of the fact that the primary insistence of the bank is that the petitioner should make deposits in cash has in my opinion blurred the vision of the Appellate Tribunal. The result is that the entire approach of the Appellate Tribunal has become faulty. In the circumstances, I consider it expedient in the interests of justice that the Appellate Tribunal should reconsider the application made by the petitioner for modifying its earlier order dated 23rd December, 1983, keeping in view the fact that the State Bank of India insists upon the making of the cash deposits by the petitioner. Learned counsel for the petitioner has urged that till the matter is disposed of by the Appellate tribunal in pursuance of the order passed by this court the threat given by the Superintendent of Central Excise, Unnao by his communication dated 16th April, 1984 should be kept in abeyance. This appears to be a reasonable request. The Superintendent, Central Excise, Unnao shall not take any steps to initiate recovery proceedings against the petitioner under Rule 230 of the Central Excise Rules, 1944 till the matter has been disposed of by the Appellate Tribunal.

4. With these observations the writ petition is disposed of. A copy of this order may be given to the learned counsel for the petitioner on payment of usual charges within 24 hours.

