(2003) 08 MP CK 0059

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4382 of 2003

Urja Cables and Metals Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Citation : (2004) 112 ECR 15 : (2003) 158 ELT 689

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Heard on question of admission.

Petitioner assails the orders P. 1 and P. 2 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. As per order P. 1, dated 17.4.2002 CEGAT has passed the order considering 18 stay applications against the total liability of Rs. 51 crores as stated by the learned Counsel for the petitioner. The CEGAT has directed the amount of 5 crore 80 lacs to be deposited in the following manner:

1. M/s. Urja Cables & Metals E/135/2002-NB Rs. 5,00,000/- 2. M/s. Urja Cables & Metals E/136/2002-NB Rs. 3,00,00,000/- 3. M/s. Continental Cable & E/171/2002-NB Rs. 1,50,00,000/- Conductors 4. M/s. Durga Industrial Corpn. E/131/2002-NB Rs. 1,25,00,000/- 2. The amount was ordered to be deposited on or before 17.7.2002. Failure to comply with the directions shall lead to vacation of the stay orders and dismissal of the appeals without any further notice. Petitioner applied before the CEGAT for the modification of the order. Prayer has been rejected as per order P. 2 on the ground that no new ground has been adduced by the Appellant for waiving deposit or modifying the stay order. In the interest of justice the appellant was given liberty to apply for restoration of the appeals within one month of the deposit if the amount directed to be deposited is deposited on or before 24.10.2002. Petition has not deposited the

amount as ordered by the CEGAT. The appeals were ordered to be dismissed due to non-compliance of the order. It is submitted that petitioner was a sick unit and was closed since January, 1999 and the petitioner was restrained from receiving any payment directly by the DRT, Jabalpur and was not in a position to deposit any amount. Findings have been recorded in the order P. 1 to the following effect:

9. We have heard the rival submissions. On careful consideration of the submissions made we note that the figures shown in bank statements are definitely higher than those shown in RT-12 returns. Insofar as the contention of the applicants that for particular months though there was no clearance of the goods or fully manufactured goods after inspection, test and packing the figures in RT-12 returns were being shown as nil whereas the figures for the purpose of over-draft were being taken from the previous month and thus the duplication has arisen in computing the duty inasmuch as though there was no manufacture of fully finished goods yet it was taken by the Excise authorities for the purpose of computing duty. All these things need detailed examination, which cannot be done at this stage. However having regard to the submissions made and the evidence on record we note that the applicants have not been able to make out a prima facie case on merits for total waiver of duty and penalty.

10. In regard to the decision of the Tribunal on the scope of reliance to be placed on information supplied to the bank we note that the facts in each case differs and therefore, case law has to be applied strictly based on the facts of a particular case.

11. In regard to financial position we note that since the allegation is of clandestine removal, statutory figures etc. maintained by the applicants in their records will not show any entry in regard to sale proceeds of these goods.

3. The amount has been ordered to be deposited in the aforesaid manner. In my opinion, the order passed by the CEGAT is just and reasonable. As stated by the learned Counsel for the petitioner fastens to Rs. 51 crores, the amount as ordered to be deposited is meagre as compared to the liability. I find no ground to make interference in the writ petition. Writ petition is dismissed.

