

(1991) 04 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 46 of 1991

Vidarbha Vineer Industries

APPELLANT

Vs

Assistant Collector of C. Ex.

RESPONDENT

Date of Decision : 19-04-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1991) 55 ELT 167

Hon'ble Judges : S.M. Daud, J;B.U. Wahane, J

Bench : Division Bench

Advocate : Mr. Lahoti, M/s. V.C. Daga and V.M. Deshpande, for the Appellant;

Judgement

Daud, J.—The petitioner has been driven to a writ Court to get the fruits of an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) on 7-6-1990.

2. The three defences raised on behalf of the first respondent are considered below :-

First it is contended that the order sought to be implemented has been appealed against and the appeal has not yet been decided by the Supreme Court. For that reason, the writ petition is said to be premature. The mere filing of an appeal even if it be in exercise of a statutory right does not operate as a fetter on the effectiveness of the order appealed against. Until varied, modified or stayed, the order is effective and the party against whom it is passed is under an obligation to give effect thereto. The respondent No. 1 went in appeal against the order way back in the later half of 1990 and even a stay application moved by the said respondent has not yet been ruled upon. Consequently it cannot be said that the petition is premature.

3. The second ground taken is that the petitioner had an alternative remedy in the shape of a motion under Rule 41 of the CEGAT (Procedure) Rules, 1982. Not having exhausted that remedy the petitioner is precluded from invoking the writ

jurisdiction of this Court. The fact that the respondents have not given effect to the decision sought to be implemented by this writ petition is enough of an answer to the untenability of the argument put forth on behalf of the respondent No. 1.

If the filing of a writ petition has not deterred the respondents on sticking on to the illegal recovery made by them, petitioner's approach to the CEGAT under Rule 41 would not have effected better results and it is well settled that the mere existence of an alternative remedy is not always a bar against the maintainability of a writ petition.

4. The third defence put forth on behalf of the first respondent is that the refund claim by the petitioner would result in its being unjustly enriched. This contention is frivolous for there is no substance question of unjust enrichment when a competent tribunal has ruled upon the legality of the claim made by the petitioner.

5. The result of the foregoing discussion is that there is no substance in any of the defences advanced on behalf of the first respondent. Respondents do made a refund in terms of petition prayer (a) except that interest payable on the sum refundable will not be 24% but 18% per annum and leviable as from 7-6-1990 until payment is made. The direction given above to be carried out within eight weeks from today. Rule in the above terms made absolute with costs.