(1990) 04 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. ... of 1990

Vidhya Ply and Board Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 30-04-1990

Acts Referred:

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

Citation : (1991) 34 ECC 203 : (1990) ECR 168 : (1992) 61 ELT 231

Hon'ble Judges : B.P. Jeevan Reddy, C.J;R.K. Gulati, J

Bench : Division Bench

Judgement

R.K. Gulati, J.—We have heard learned counsel for the petitioner and Sri Shishir Kumar, learned Standing Counsel appearing for the respondents. The only relief sought in this writ petition is that a writ or order in the nature of mandamus be issued directing the respondents not to press for the recovery of demand which is disputed in the appeal pending before the Collector of Central Excise (Appeals), New Delhi till the petitioner''s application under the proviso to Section 35F is not decided by the appellate authority.

2. It appears that being aggrieved by the notice/order dated 30th November, 1989 the petitioner has preferred an appeal u/s 35F of the Central Excises and Salt Act, 1944 (for short the act) before the Collector of Central Excise (Appeals), New Delhi accompanied by an application under the proviso to the said section for dispensing with the condition of pre-deposit of dues as required u/s 35F aforesaid. The proviso reads as under:

"Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of the opinion that the deposit of any duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeals) or, as the case may be, appellate Tribunal may dispense with such deposit subject to such condition as he or it may deem fit to impose so as to safeguard the interest of Revenue."

3. The application dated 27th February, 1990, under the above proviso, it is stated was filed on 28th February, 1990 before the Collector of Central Excise (Appeals), New Delhi on which no order has been passed and the application is still pending decision. It is further asserted that pending disposal of the said application the respondents have threatened the petitioner to recover the dues disputed in the appeal by taking recourse to the coercive measures including the recourse to Rule 230 of the Central Excise Rules, 1944. It is in this background that the petitioner has sought the relief mentioned above.

4. Now Section 35F of the Act under certain circumstances makes it mandatory on the person desirous of appealing against a decision or order under the Act to deposit with the adjudicating authority the duty demanded or penalty levied by the decision appealed against. Under the proviso the appellate authority is conferred with the discretion to dispense with such deposit on such condition as it may deem fit to impose, where the appellate authority is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such a person. Thus a statutory obligation is cast on the appellate authority where its powers under the proviso are invoked by the person appealing to it, to make such order as it may think fit as regards the payment of duty or penalty which is the subject-matter of appeal before it. The inaction on the part of the appellate authority to pass an appropriate order on the application under the proviso, filed before it and in the meanwhile permitting the recovery of disputed dues would amount to a refusal to exercise the. discretion when called upon and would frustrate the very purpose and object with which the powers were conferred on the appellate authority to dispense the making of deposit of the disputed dues in an appropriate case. To put it differently, the inaction on the part of the appellate authority in such a situation would not only defeat the spirit of proviso but will also result in deprivation of as valuable right to which an appellant is entitled under the proviso to Section 35F aforesaid. This certainly cannot be permitted to happen.

5. In L. Hirday Narain Vs. Income Tax Officer, Bareilly, , the Supreme Court pointed out that, if a statute invests a public officer with authority to act in a specified state of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist.

6. As in the instant case, the respondents have threatened and are taking coercive measures to recover the disputed dues from the petitioner in absence of any order being made on the application of the petitioner by the appellate authority, we consider it equitable and in the interest of justice to issue a mandamus to the Collector of Central Excise (Appeals), New Delhi, respondent No. 2 to dispose of the application of the petitioner dated 27th February, 1990 within period of two weeks from the date a certified copy of this order is filed before him. The petitioner undertakes to file a copy of this order within ten days.

The petitioner also undertakes that it will not seek any adjournment of the date fixed for disposal of its application dated 27th February, 1990.

7. We further direct that till such time the application dated 27th February, 1990 is not decided by the Collector of Central Excise (Appeals), New Delhi the recovery of the amount disputed in the appeal shall remain stayed.

8. Subject to the above the writ petition is finally disposed of.

9. Let a certified copy of this order be given to learned counsel for the petitioner on payment of usual charges, within two days.

