

**(1999) 06 AP CK 0016**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 9990 of 1999**

Vijay Packaging Systems Ltd.

APPELLANT

Vs

Commr. of Cus. and C. Ex.

RESPONDENT

**Date of Decision : 24-06-1999**

**Acts Referred:**

**Citation : (2000) 120 ELT 79**

**Hon'ble Judges : T. Ch. Surya Rao, J;P. Venkatarama Reddi, J**

**Bench : Division Bench**

**Advocate : S.R. Ashok, for the Appellant; B. Adinarayana Rao, SC, for the Respondent**

## **Judgement**

P. Venkatarama Reddi, J.—The order dated 6-11-1998 and 10-2-1999 of the CEGAT, South Zonal Bench at Chennai are being assailed in this writ petition. Pending the appeal, the Tribunal directed the deposit of a sum of Rs. 25,00,000/- towards the disputed duty within three months and the pre-condition of deposit of tax and penalty has been waived subject to the fulfilment of the said condition. The petition for re-consideration of the said order made on the ground of financial inability and the sickness of the company has been rejected by the Tribunal by its order dated 10-2-1999. Hence the present writ petition.

2. As the appeal has been rejected during the pendency of the writ petition, the petitioner has sought for amendment of the writ petition by filing W.P.M.P. No. 15682 of 1999 for quashing the order of CEGAT dated 12-5-1999. That application has been allowed by us today.

3. Having regard to the magnitude of duty and penalty involved, the order passed by the Tribunal is apparently reasonable and normally, we would not have, in exercise of writ jurisdiction, disturbed it. However, there are certain relevant factors which impel us to modify the order of Tribunal. It is on record that B.F.I.R. has treated the petitioner-company as a sick industrial company. If the position of the outstandings of the petitioner and the net assets as reflected

in the balance sheet is taken into account, the financial predicament of the petitioner becomes amply clear. The fact that the assessee is a sick industry is one of the considerations taken into account by the Supreme Court in Sangfroid Remedies Ltd. Vs. Union of India (UOI) and Others, while considering the question whether the pre-condition imposed by the CEGAT was reasonable. That apart, we cannot say that the petitioner has no prima facie case. It is the contention of the petitioner that even the allegations in the show cause notice confirm the fact that it does not have the machinery and equipment for manufacturing the H.D.P.E. Sacks. The Tribunal made an observation that "prima facie the findings arrived at cannot be said to be wrong or incorrect and they are based on arguments made by both sides and after due consideration of the case". The said observation was too broadly made and as remarked earlier, we cannot say that the petitioner has no prima facie case at all. In fact the Tribunal itself recognised the prima facie case in favour of the petitioner; otherwise, the interim relief would not have been granted to that extent. Of course, the mere existence of prima facie case by itself does not entitle the petitioner to get unconditional stay. Having due regard to all the relevant factors and the hardship that may be caused to the petitioner by denying the remedy of appeal, we consider it just and proper to modify the order so as to direct the petitioner to deposit a sum of Rs. 12 1/2 lakhs within a period of four weeks and furnish bank guarantee for the like sum to the satisfaction of adjudicating authority within the same period. In case of non-compliance, the order rejecting the appeal by the Tribunal will remain. In case the above condition is complied with, the order shall be revoked and appeal be restored to file. The Tribunal shall endeavour to dispose of the appeal expeditiously.

4. Accordingly the writ petition is disposed of. No costs.