(2004) 10 GUJ CK 0068

In the Gujarat High Court

Case No : Special Civil Application No. 13365 of 2004

Vishwa Traders Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F
Constitution of India, 1950 — Article 226

Citation : (2005) 123 ECR 206 : (2005) 180 ELT 150

Hon'ble Judges : Sharad D. Dave, J;B.J. Shethna, J

Bench : Division Bench

Advocate : Paresh M. Dave, for the Appellant; Jitendra Malkan, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Heard learned Counsel Mr. Dave for petitioners and Mr. Malkan, learned Standing Counsel appearing on advance copy of this petition being served upon the respondents.

2. The Commissioner of Central Excise and Customs, Vadodara-II passed the order-in-original dated 28-11-2003 after hearing the petitioners on show cause notice served upon them whereby he confirmed duty amount of Rs. 90,50,293/- against the petitioner-company with interest and penalty on Rs. 90,50,293/- u/s 11AC of the Central Excise Act, 1944. Penalties of Rs. 25,00,000/- on Mr. Vivek B. Maheshwari, Director and Rs. 10,000/- each on Mr. B.M. Patel, Mr. Anil Kumar Jadav and Mr. Devesia, employees of the petitioner company and on other parties were levied by the said order (Annexure-B). The impugned order dated 28-11-2003 was served upon the petitioners on 27-1-2004. Separate appeals with stay applications were filed against the said order before the Appellate Tribunal on 18-3-2004. During the pendency of the same, respondents came to the factory of the petitioners on 22-9-2004 and attached all the raw .materials as well as finished goods worth Rs. 26,96,160/- lying in the factory under

panchnama dated 22-9-2004 (Annexure-D) and the same were handed over to the petitioners under supratnama (Annexure-E).

3. This petition was filed yesterday i.e. on 11-10-2004 and was moved for urgent orders today before this court praying that attachment of inputs, materials and goods vide panchnama dated 22-9-2004 (Annexure-D) made by the third respondent thereby allowing the petitioners to use the materials in accordance with law. It is also prayed that third respondent be restrained from taking any action against the petitioners in pursuance of order-in-original No. 13/ERC-11/ MP/2003 dated 28-11-2003 (Annexure-B) till the pendency and final disposal of the stay application filed by them before CESTAT, Mumbai.

4. Learned Counsel Mr. Dave for the petitioners submitted that on the expiry of period of 180 days, the respondent No. 3 could not have attached the goods, inputs and other materials of the petitioners under panchnama dated 22-9-2004 till the stay applications are pending before the CESTAT. He has placed reliance on several orders passed by different Division Benches of this court, which are annexed to this petition at Annexure-A collectively. However, from the reply affidavit of Mr. G. Soundararajan, Assistant Commissioner of Central Excise, Bharuch Division, it appears that after service of order-in-original dated 28-11-2003, passed by the Commissioner, Central Excise, Vadodara-II on the petitioners on 21-7-2004, they did not pay up the Government dues nor produced any stay order though they were reminded by the Jurisdictional Supdt. of Jambusar vide letter dated 16-4-2004. Therefore, on 22-9-2004 the Superintendent of Central Excise (Preventive) office of the Commissioner of Central Excise, Vadodara-II visited the factory and attached the excisable goods and raw materials valued Rs. 20,92,166/- and not Rs. 26,92,166/-, as averred in the petition by the petitioners under the panchnama.

5. It is also clear from the averments made in the petition itself that hearing of the stay applications is going to take place before CESTAT on 27th of this month i.e. within a period of fortnight from today.

6. In view of the above, we are of the considered opinion that none of the orders annexed to this petition at Annexure-A by the petitioners will have application on peculiar facts of this case and when the goods are already attached with panchnama and that the hearing of the stay applications are going to take place very soon before the CESTAT, then there is no reason for this court to interfere, at this stage.

7. Before parting, we must state that the sum and substance of the submission made by Mr. Dave that CESTAT is over burdened and it is not in a position to decide all the stay applications within a period of six months of filing and, therefore, some innocent persons are made to suffer. For that one has to approach the appropriate authority for redressal of the grievance. We can say that only vigilant person can get the benefit and it is felt that many stay applications of many persons have been heard and disposed of within six month

of their filing.

8. At this stage, a request is made by Mr. Dave, learned Counsel for the petitioners that at least still stay applications of the petitioners are decided by the CESTAT on 27-10-2004 they may be allowed to bring raw materials and start production work in the factory, which has come to stand still, instead of passing any such order on this, we leave it to the discretion of the authority to consider the request of the petitioners.

With these observations, this petition is rejected in limine.

