(2006) 01 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 183 of 2006

V.S. Exim (P) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35A, 35B

Citation : (2006) 199 ELT 779

Hon'ble Judges : Prakash Krishna, J;A.K. Yog, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; Ramendra Pratap Singh, for the Respondent

Judgement

1. Heard Shri A.P. Mathur, learned Counsel for the petitioner and Shri Ramendra Pratap Singh, Advocate, appearing on behalf of the contesting respondents. Admittedly an Order-in-Appeal No. 110-113-CE/APPL/ NOIDA/05, dated 28-11-2005 passed u/s 35A of Central Excise Act, 1944, passed by Commissioner (Appeals), Customs and Central Excise, NOIDA against Order-in-Original No. 06/Addl. Commr/Noida/2005, dated 31-3-2005 passed by Additional Commissioner, Central Excise, Noida fastens liability to pay excise duty upon the petitioner. The said fact is evident from the letter issued by the office of the Commissioner (Appeals), Customs and Central Excise, Meerut-II (Noida), dated 28-11-2005 (Annexure-2 to the writ petition. In the said office letter petitioner is mentioned at No. 2 whereby it is being informed that appeal against order-in-original (referred to above), will lie u/s 35(B) of the Central Excise Act, 1944 to the Customs, Excise and Service Tax Appellate Tribunal, New Delhi within three months.

2. Before expiry of three months for filing appeal (as indicated above) the authority issued a notice dated 12-12-2005 (Annexure-3 to the writ petition) requiring the petitioner to deposit the amount of excise duty and penally vide said order-in-original. In reply to the above, petitioner addressed his letter dated

18-1-2006 to the Superintendent, Central Excise, Range-31-Sikandrabad containing that period for filing appeal within statutory period of limitation shall be lapsing only on 28-2-2006; steps were already taken to file appeal and stay application therein through advocate and since stipulated period of limitation has not lapsed, petitioner prayed that no coercive action for recovery of amount confirmed in the said order-in-appeal may be taken against it, in view of certain decisions of Bombay High Court (referred in the said letter dated 18-1-2006)/ Annexure-4 to the writ petition. It appears that before any action could be taken on the said letter dated 18-1-2006, notice of attachment has been given to the petitioner requiring to pay penalty (Rs. 11,31,557/-), being amount of Government Dues payable by the petitioner. Attachment was contemplated under Customs (Attachment of Property of Defaulters for recovery of Government Dues) Rules, 1995. The concerned authority - Deputy Commissioner, Central Excise Division-5, NOIDA by means of order dated 20-1-2006/Annexure-6 to the writ petition passed attachment order which reads:

It is ordered that M/s. V.S. Exim (P) Ltd., A-20, Industrial Area, Sikandrabad (Defaulter) be, and are hereby prohibited and restrained, until the further order of the undersigned, from transferring/charging the under mentioned property in any way and that all persons be, and that they are hereby prohibited from taking any benefit under such transfer or charge.

SPECIFICATION OF PROPERTY at A-20, Industrial Area, Sikandrabad.

1. 620 Kgs of Black Pipes valued Rs. 15,000/- approx.

2. One Gen.set 250 KVA of Jakson Brand bearing Sl. No. CJ 04040171 valued at Rs. 700,000/- approx.

3. Three electric motors installed in CR Plant valued at Rs. 1,50,000/- approx.

4. Three lathe Machine (Kharad machine) valued at Rs. 75,000/- approx.

5. Two Threading machine valued at Rs. 1,00,000/- approx.

6. CRANE with its fitment valued at Rs. 3,00,000/- approx. Total Goods Attached, Estimated Cost = Rs. 13,40,000/-.

3. On behalf of petitioner, it is submitted, with reference to the Para - 6 of the writ petition that principal amount of excise duty as levied on the petitioner was deposited by the petitioner and has already been appropriated by Central Excise Authorities and only amount of penalty is in dispute. It is further submitted that the proceedings for attachment are arbitrary and unwarranted in view of the fact that statutory period of limitation for filing appeal and to obtain interim stay order has not expired as yet. In addition to the above, reference is made to Para-11 of the writ petition wherein it is contended that there are departmental instructions from the Central Board of Excise and Customs, New Delhi not to initiate recovery proceedings for the initial period of 4 months from the date of communication of the impugned order. The petitioner has not given the details

nor filed the relevant instructions for perusal of the Court. Apart from it, averments made in Para-11 of the writ petition itself shows that initial period for not initiating recovery proceedings is ''four months'' from the date of communication of the impugned order. In the instant case, the impugned order is dated March, 31, 2005. Apparently 4 months time has lapsed from the date of the said order. On perusing Para-6 of the writ petition it is clear that said order dated 31-3-2005 was issued on 11-5-2005. The petitioner is unable to point out the exact date of communication of the said order dated 31st March, 2005 from the pleadings contained in writ petition. Taking into account the date of issuance of the order (as mentioned in the writ petition) i.e. 11-5-2005, four months time has already lapsed. There is no force in the aforesaid contention.

4. With regard to the submission that attachment proceedings should not have been initiated before time for filing appeal had come to an end, i.e. 28-2-2006, we find no substance. If the petitioner is aggrieved by notice dated 12-12-2005, he should have ensured to file appeal along with the interim application promptly and expeditiously before impugned action of attachment was taken. Period of limitation does not as of its own, automatically amounts to staying the operation of judgment/order sought to be challenged, against which appeal is provided. However, taking into account that principal amount of excise duty has already been appropriated (as stated in the writ petition) and that petitioner has admittedly got a right of appeal and for applying interim stay order therein and also that petitioner be not put to an irreparable loss as consequence of impugned order of attachment dated 20-1-2006 as consequence of which the factory of petitioner is virtually said to have been closed down and also that the respondents'' interest should also be safeguarded, as well as, in view of the statement made on behalf of the petitioner that requisite appeal shall be filed within one month from today, the expediency and end of the interest of justice require that petitioner be given an opportunity to file appeal along with interim stay application on or before February, 28, 2006.

5. We direct that the impugned order of attachment dated January, 20, 2006 (Annexure-6 to the writ petition), if the petitioner furnishes security for the amount of penalty in question within two weeks from today (other than cash and bank guarantee) to the satisfaction of respondent No. 3, shall remain in abeyance. It is further provided that present order passed by us shall lapse if petitioner fails to furnish security as stipulated above and in case of petitioner''s failure to file appeal along with interim stay application on or before 28-2-2006. It is further provided that this order shall also lapse automatically without further reference to the Court as soon as requisite orders are passed on the stay application/appeal.

6. Writ petition is allowed partly to the extent indicated above. No order as to costs.

7. Copy of this order be given to the counsel for the parties on payment of usual charges within ten days.