Atic Industries Ltd. Vs. Collector of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-11-1983

Reported in : (1983)LC389DTri(Mum.)bai

Appellant : Atic Industries Ltd.

Respondent : Collector of Central Excise,

Judgement :

1. This is an application for stay filed by M/s Atic Industries Ltd., Atul in connection with the appeal against the order of the Collector of Central Excise, Baroda vide Order No. 2 of 1982. It is a transferred matter from the Board. The appellant had filed stay petition before the Board on the 10th day of July, 1982. The Learned Counsel for the appellant has filed a photostat copy of the letter dated the 31st January, 1983 issued by the Supdt. of Central Excise, Atul-Range II directing them to make the payment by the 5th day of February, 1983.

This stay petition is in respect of excise duty of Rs. 33,25,832.35 refunded to the appellants in error. The appellants had been agitating their claim before various Courts and excise duty was refunded to the appellants in view of the Honourable Supreme Court Judgment. Thereafter a Notice under Section 35-A (2) of the Central Excises & Salt Act, 1944 was issued and in the review proceedings, an order was passed by the Collector of Central Excise, Baroda on the 31st day of 1982 and a demand of Rs. 33,25,832.38 was created. The Learned Counsel for the appellants has prayed that appellants will suffer undue hardship and irreparable loss if the appellants are required to pay the huge amount of Rs.

33,25,832.38. The Excise authorities are pressing hard for immediate payment and as such the appellants have prayed that immediate stay may be granted. The Departmental Representative has objected to the grant of stay on the ground that there is no undue harship to the appellants. During the course of the hearing we had drawn the attention of the Learned Counsel for the appellant Shri R. J. Joshi that provisions of Section 35-F of the Central Excises and Salt Act, 1944 did not cover refund of duty erroneously paid. The same is reproduced below:- "Sec. 35-F. Deposit, pending appeal of duty demanded or penalty levied :-Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied : Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue".

2. The learned Counsel for the appellants has argued that this Court has got inherent powers to grant stay even in the case of the type under consideration and has relied on the Honourable Supreme Court Judgment in the case of Mohammed Kunhi v. Income-Tax Office reported in 71 ITR 850. He has also relied on a Patna High Court Judgment in the case of Puran Mal Kauntia v. Income Tax office-98-ITR 39.

3. We have examined the case. We respectfully follow the judgment of the Honourable Supreme Court and are satisfied that this Court has inherent powers as to the grant of stay. In the interests of justice we hereby grant an interim stay to the appellants for the re-payment of excise duty refund of Rs. 33,25,832.38 upto the 8th day of March, 1983.

The Revenue authorities are directed not to recover this amount till the 8th day of March, 1983. For the grant of permanent stay till the disposal of the appeal the stay petition shall be heard by the Bench on the 8th day of March, 1983. The appellants will not be granted any adjournment. In case the appellants fail to appeal on the 8th day of March, 1983, or try to seek adjournment without any valid cause the stay petition shall stand vacated on the 8th day of March, 1983.