Collector Central Excise Vs. J.K. Cotton Spg. and Wvg. Co. Ltd.

Collector Central Excise Vs. J.K. Cotton Spg. and Wvg. Co. Ltd.

SooperKanoon Citation : sooperkanoon.com/4088

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-19-1988

Reported in : (1988)(34)ELT681TriDel

Appellant : Collector Central Excise

Respondent : J.K. Cotton Spg. and Wvg. Co. Ltd.

Judgement :

1. The respondents had made a prayer for grant of stay in respect of the show cause notice dated 22-12-1987. Shri V. Sridharan, the learned advocate has appeared on behalf of the respondents. He has reiterated the contentions made in the misc. application. The Bench has desired Shri Sridharan to satisfy the Tribunal whether the Tribunal is empowered to stay the operation of the show cause notice pertaining to the period subsequent to the filing of the appeal. To this Shri Sridharan stated that the applicant's case is fully covered by the Hon'ble Delhi High Court judgment in the case of ITC and Anr. v. U.O.I, reported at 1983 ELT 1. He has stated that the Hon'ble Delhi High Court held that - "In our opinion the power of the Collector (Appeals) and the Tribunal, contained in the proviso to Section 35F, is of a wide amplitude. In appropriate cases the said appellate authorities will have the power to issue directions with regard to future levy which may be imposed or threatened. Apart from the proviso to Section 35F, the appellate authority has inherent power of granting interim relief in the exercise of its appellate jurisdiction. This has been so recognised and explained by the SC in the case of Income Tax Officer v. Mohd. Kunni, 92 I.T.R. 341." Shri V. Sridharan,

the learned advocate has argued that in view of the judgment cited by him this Tribunal has got power and the ends of justice requires that stay may be granted.

2. Shri S. Krishnamurthy, who has appeared on behalf of the appellant Collector states that he has got no objection for the grant of stay in view of the judgment cited by the learned advocate and further states that an early hearing may be granted.

3. We have heard both the sides and have gone through the facts and circumstances of the case. We are satisfied that the facts & circumstances require that stay should be granted in respect of the further proceedings on the show cause notice dated 22-12-1987 issued by the Asstt. Collector, Central Excise, Division I, Kanpur. Para No. 9 of the Hon'ble Delhi High Court judgment in the case of I.T.C. Ltd. and Anr. v. U.O.I. reported in 1983 E.L.T.I is reproduced below :- "9. It was then submitted that at times excise duty is a recurring liability and there will be no power with the Collector (Appeals) or the Tribunal to grant stay for future liability. In our opinion the power of the Collector (Appeals) and the Tribunal, contained in the proviso to Section 35F, is of a wide amplitude. In appropriate cases the said appellate authorities will have the power to issue directions with regard to future levy which may be imposed or threatened. Apart from the proviso to Section 35F, the appellate authority has inherent power of granting interim relief in the exercise of its appellate jurisdiction. This has been so recognised and explained by the Supreme Court in the case of Income Tax Officer v. Mohd. Kunni, 92 I.T.R. 341. We must make it clear that it does not mean that in every case where appeal is filed the Collector (Appeals) or the Tribunal must, as a matter of course, grant interim relief. The guidelines for the grant of interim relief are contained in the proviso to Section 35F, namely, relief will be granted only if there would be undue hardship to the person if he is asked to pay excise duty or penalty. Unless, therefore, it can be shown by the' appellant that undue hardship would be caused if he is required to pay the duty or penalty the appellate authorities would be entitled to refrain from granting any interim relief. What is undue hardship would depend upon the facts of each case. Where a manufacturer has collected excise duty from his customers, or continues to collect the same, it will be extremely difficult for that person to plead hardship entitling him to the grant

of interim orders."