

Datoon and Datoon India Vs. Cegat

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Court : Allahabad

Decided On : Feb-06-1995

Reported in : 1996(81)ELT208(All)

Judge : B.K. Singh, J.

Acts : [Central Excise Act, 1944](#) - Sections 35B and 35F

Appeal No. : Writ Petition No. 185 of 1995

Appellant : Datoon and Datoon India

Respondent : Cegat

Judgement :

ORDER

B.K. Singh, J.

1. The petitioner, by the instant writ petition, has impugned the order dated 6-12-1994, passed by the Tribunal on petitioner's application for stay and waiver.

2. The relevant facts, necessary for the disposal of the writ petition may be stated. The petitioner is in the business of manufacture of 'Pan Masala' and tobacco, A licence for dealing in the said trade has been granted to the petitioner. The facts disclosed in the file reveal that on 27-6-1990 a team of Central Preventive Officers, Central Excise, Kanpur made a surprise visit in the premises where the petitioner

does manufacturing of the above mentioned commodity. They found certain discrepancies and also evasions. Consequently a notice was issued to the petitioner and the Collector, Central Excise, Kanpur by order dated 25-11-1993 confirmed demand of the duty amounting to Rs. 3,68,718/- on 'Pan Masala' and Rs. 56,535/- on branded Zarda. He also imposed penalty of Rs. 25,000/-. The petitioner preferred an appeal under Section 35B of Central Excises and Salt Act before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi. Alongwith the appeal, an application for stay and waiver was moved. The Tribunal has disposed of the petitioner's said application by order dated 6-12-1994. The Tribunal has accepted the petitioner's case of financial hardship and, accordingly, modified the condition of pre-deposit of the entire duty and penalty imposed in the order passed by the Collector by providing that the petitioner should deposit a sum of Rs. 2,00,000/- towards duty which may be roughly 50% of the total amount of the duty and further directed to deposit a sum of Rs. 5,000/- towards penalty. The said amount was ordered to be deposited within a period of two months and its compliance has been ordered to be reported to the Tribunal on 10-2-1995. It is against this order of the Tribunal that the instant writ petition has been preferred.

3. I have heard the learned counsel of the petitioner as well as the learned Standing Counsel on behalf of the Central Government.

4. The learned Counsel of the petitioner has submitted that although the Tribunal has exercised its discretion in favour of the petitioner but it has not recorded any reason whatsoever for imposing the condition of depositing of Rs. 2,00,000/- towards duty when the case of the petitioner regarding the financial hardship was accepted. It has also been submitted that for exercising any discretion the judicial propriety demands that some valid judicial reason may be expressed. The learned counsel has submitted that the petitioner has suffered huge losses and the factory of the petitioner was also gutted in fire which took place in the year 1991. The learned counsel has pointed out that after the fire the petitioner has not been able to recover any amount from the Insurance Company and the business, more or less has come to a standstill. It has also been submitted that in such a situation the Tribunal should have acted in accordance with the proviso to Section 35F of the above referred Act.

5. The learned Standing Counsel has vehemently opposed the submissions of the learned Counsel of the petitioner. He has urged that when the Tribunal has granted relief on subjective satisfaction then the jurisdiction in a writ petition should not be exercised and the writ petition should be dismissed in limine.

6. I have considered the above submissions of the learned counsel of the petitioner as well as the learned Standing Counsel. Having considered the submissions of the learned counsel and having perused the order passed by the Tribunal, it is no doubt correct that the Tribunal has given relief to the petitioner on the ground that financial hardship has been 'pleaded by them'. The Tribunal in such a case has not recorded any reason which may convince me that the relief granted by the Tribunal has any relationship with financial stringency pleaded by the petitioner. Since in the case the Tribunal has not given any reason to justify that on the pleaded facts of financial hardship the condition of depositing of Rs. 2,05,000/- is justified then it is a fit case where interference should be made. But it must be done in a way that interest of the opposite party is advanced and the petitioner does not suffer in law.

7. At this juncture the learned counsel of the petitioner offered fairly that in such a situation some concession should have been granted and he has stated that the order of the Tribunal may remain same but it may be modified to the extent that the petitioner may be directed to deposit a sum of Rs. 1,00,000/- in cash and the petitioner will furnish suitable security to the satisfaction of the Tribunal in respect of the other Rs. 1,05,000/-.

8. In my opinion, the condition of financial hardship having been accepted by the Tribunal itself, the relief to the extent, that has been suggested by the learned counsel of the petitioner, can be granted.

9. Accordingly, it is ordered that in case the petitioner deposits a sum of Rs. 1,00,000/- in cash and furnishes security of Rs. 1,05,000/- other than Bank guarantee to the satisfaction of the Tribunal within one month from today then sufficient compliance of Tribunal's order would be taken as accomplished and the Tribunal shall hear the appeal on merits. To the above extent the order of the Tribunal is modified. With the above directions this writ petition is finally disposed

of.

10. A certified copy of the order shall be issued to the learned counsel of the petitioner on payment of usual charges within three days.

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