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Hi-tech Flexo Text (P) Ltd. Vs. Cegat

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Court : Allahabad

Decided On : Jan-06-1998

Reported in : 1998(99)ELT39(All)

Judge : A.K. Banerji, J.

Acts : Central Excise Act, 1944 - Sections 35F

Appeal No. : Civil Misc. Writ Petition No. 1055 of 1995

Appellant : Hi-tech Flexo Text (P) Ltd.

Respondent : Cegat

Advocate for Def. : Vikram Gulati, Adv.

Advocate for Pet/Ap. : A.P. Mathur, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

A.K. Banerji, J.

1. By means of this writ petition, the petitioner, M/s. Hi-Tech Flexo Text (P) Ltd. has inter alia prayed for a writ of certiorari for quashing the impugned order dated 23-8-1995 (Annexure-7) passed by the Customs, Exicse and Gold (Control)

Appellate Tribunal, New Delhi (the Tribunal in short) by which the said Tribunal disposed of the application filed by the petitioner for waiver directing them to pre-deposit Rs. 2 lakhs. The petitioner has also sought a writ in the nature of mandamus directing the Tribunal to decide the petitioner's appeal without insisting on any pre-deposit and to stay the recovery of the adjudged amount of duty during the pendency of the appeal.

2. The petitioner's case in brief is that the petitioner is engaged in manufacture of narrow woven elastic tape, which is used by the manufacturers of under garments. The petitioner claimed benefit of exemption from Central Excise Duty under Notification No. 1 of 1993, dated 28-2-1993. The Assistant Collector vide order dated 7-12-1994 did not grant the benefit of the said Notification to the narrow woven tapes and demanded the differential duty amounting to Rs. 7,77,025.44 for the period April, 1994 to October, 1994. Aggrieved, the petitioner filed an appeal before the Collector (Appeals), Ghaziabad, which was dismissed vide order dated 28-4-1995. The petitioner, thereafter, filed an appeal before the Tribunal along with a stay-cum-waiver application. The said application was disposed of vide order dated 23-8-1995 directing the petitioner to deposit Rs. 2 lakhs within eight weeks from the date of the receipt of the order. The deposit of the balance amount was waived. The petitioner has challenged the aforesaid order by means of the present writ petition.

3. I have heard Sri A.P. Mathur, learned Conusel for the petitioner and Sri Vikram Gulati, learned Counsel appearing for the respondents at the admission stage. The writ petition is being finally decided with the consent of the learned Counsel for the parties.

4. The main contention of Sri Mathur is that the Tribunal has failed to consider the prima facie merits of the case while considering the stay-cumwaiver application. He has further contended that the Tribunal has failed to consider the financial position of the petitioner in the right manner as contemplated under Section 35F of the Central Excises and Salt Act, 1944. However, the petitioner is not in a position to deposit the amount of Rs. 2 lakhs during the pendency of the appeal and the same will effect its business.

5. Having heard the learned Counsel for the parties and having carefully perused the orders passed by the Tribunal, I do not find any merits in the said submission. So far as the merits of the case is concerned, learned Counsel for the respondents has contended that the controversy involved in this case has been set at rest by the Supreme Court. Consequently, the submission on merits by the petitioner cannot be sustained any more. However, so far as the merits of the appeal is concerned, it will not be proper for this Court to make any observation with regards to the same as the matter will be considered on meirts by the Tribunal. So far on the question of waiver of pre-deposit is concerned, I am unable to agree with the learned Counsel that the Tribunal has failed to consider the financial position or the hardship suffered by it. I find that the Tribunal had applied its mind to the said fact and has observed that having regard to the totality of the circumstances, the applicant (petitioner) be directed to deposit Rs. 2 lakhs within eight weeks from the date of the receipt of the order and it had waived the deposit of the balance amount which was over Rs. 5,77,000/-. I am unable to agree with the learned Counsel that the judicial discretion exercised by the Tribunal is in any way illegal or improper or calls for any interference by this Court.

6. There is another aspect of the matter. On 9-11-1995, this Court had while granting time to the learned Counsel for the respondents had fixed 9-1-1996 for the purpose of Admission of this writ petition. The Court had also passed an interim order operative till the date fixed. The case was not heard on 9-1-1996 and no effect has been made by the petitioner to get the interim order extended. Therefore, the interim order passed by this Court stand exhausted and there is no stay for the last two years.

7. Consequently, this writ peititon lacks merits and the same is dismissed. However, as the Court has been informed that the appeal filed in the year 1995 before the Tribunal is still pending, it would be desirable that the same be disposed of as expeditiously as possible preferably within two months of the pre-deposit of Rs. 2 lakhs as directed in the order dated 23-8-1995.

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