

H. and R. Johnson (India) Ltd. Vs. Union of India (Uoi)

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Court : Madhya Pradesh

Decided On : Apr-22-1993

Reported in : 1994(45)ECC179; 1993(68)ELT571(MP)

Judge : V.S. Kokje and ;R.D. Shukla, JJ.

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

Appeal No. : Misc. Petition No. 888 of 1993

Appellant : H. and R. Johnson (India) Ltd.

Respondent : Union of India (Uoi)

Judgement :

ORDER

1. Heard Shri Bhat for the petitioner on admission.

2. In this petition an interim order of CEGAT has been challenged. In an earlier petition No. 749/92, dated on 28-4-1992 this court had directed that if the petitioner files an application seeking stay before the Tribunal then the Tribunal shall reconsider its earlier order and pass an appropriate order in the facts and circumstances of the case. An application was accordingly made and the CEGAT has disposed it of by the impugned order. Admittedly the application which is disposed of by the CEGAT was Under Section 35F of the Central Excises & Salt Act, 1944 for exemption from precondition of deposit of the amount of excise duty held to be recoverable under order appealed against. While disposing of such an application financial position of the appellant as also whether a prima facie case is made out or not has to be seen to form an opinion as to whether the deposit of duty demanded or penalty levied would cause undue hardship to the appellant. It has also been the practice of the CEGAT to see while disposing of such application as to whether a prima facie case is made out in the appeal. The CEGAT has found that under the circumstances of the case the appellant do not have a prima facie strong case on merits. It was also found that since the appellants before it were a profit making company the case was not that of financial hardship. Even so the CEGAT has directed the applicants to deposit a sum of Rs. 10,00,000 /- as the deposit as a condition for entertainment of the appeal instead of depositing the full amount which is about 22,00,000/-. We find no reason to interfere with this order. Shri Bhat further submitted alternatively that since in the communication of the impugned order to his client and in preparing, filing and getting this case heard, a lot of time has been lost and the time of 8 weeks for deposit of Rs. 10,00,000/- would be insufficient. In the circumstances of the case we direct that if the deposit of Rs. 10,00,000/- is made on or before 10-5-1993, the date fixed for reporting compliance before CEGAT, a deposit shall be accepted and the time granted for making the deposit shall be extended upto 10-5-1993. However, the CEGAT shall be free to extend the time further if it so considers necessary and proper. With these directions the case is disposed of.