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Sunrise Structurals and Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-05-1990

Reported in : (1990)LC568Tri(Delhi)

Appellant : Sunrise Structurals and

Respondent : Collector of C. Ex.

Judgement :

1. The applicants have made a prayer for dispensing with the predeposit of the duty amount of Rs. 8,38,922.13. Shri V. Sridharan, the learned advocate who has appeared on behalf of the applicant, pleaded that the impugned order was passed by the Collector of Central Excise, Nagpur and earlier the Assistant Collector had passed an order No. V(68) 3-3/85/9301-04 dated 31st July, 1985 and the Assistant Collector had adjudicated the same against show cause notice No. V(68) 3-3/85/2256 dated 11th March, 1985. Shri Sridharan stated that in view of amendment to Section 11-A which came into force from 27th December, 1985 where larger period was involved, the adjudication could have been done only by the Collector, and in the present matter the adjudication was done by the Assistant Collector and the order passed by the Assistant Collector is a nullity in the eyes of law. If the Collector was not satisfied with the order passed by the Assistant Collector, he should have resorted to Section 35-E of the Central Excises and Salt Act, 1944 and an application should have been filed before the Collector (Appeals). He pleaded that this ratio is fully in favour of the applicant in view of the decision of the South Regional Bench in the case of Parker Leather Export

Company v. Collector of Customs, Madras reported in 1987 (29) ELT 53 (Tri.) where the Tribunal had followed the earlier decisions of the Tribunal. Shri Sridharan stated that no new facts had come to the knowledge of the adjudicating authority and as such the Collector, if he was aggrieved, should have filed an application before the Collector (Appeals). The same was not done. He has also referred to a judgment of the Supreme Court in the case of Shiv Chander Kapoor v. Amar Bose reported in 1990 (1) Supreme Court Cases 234 and had laid special emphasis on para No. 23 of the said judgment which appears on page 243 of the said book where the Supreme Court had observed that "the word 'void' is meaningless in an absolute sense; and that unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the impeccable of orders." Shri Sridharan pleaded that the applicants have got a good case on merits. The applicant's unit is a sick unit and is having acute financial crisis. He has pleaded for the grant of stay.

2. Shri M.S. Arora, the learned JDR who has appeared on behalf of the respondent pleaded that the subsequent order passed by the Collector is a valid order in the eyes of law and there was no necessity of taking a note of the Assistant Collector's earlier order, which was a void order in the eyes of law. He has pleaded for the rejection of the stay application.

3. We have heard both the sides and have gone through the facts and circumstances of the case. Prima facie the applicants appear to have a good case on merits. In view of the decision of the Supreme Court in the case of Shiv Chander Kapoor v. Amar Bose reported in 1990 (1) Supreme Court Cases 234, where the Hon'ble Supreme Court had held that order remains enforceable unless necessary proceedings are taken to establish cause of its invalidity and get it quashed or otherwise upset. Para No. 23 from the said judgment is reproduced below: - "In Wade's Administrative Law, 6th edition at pp. 351-353, there is an illuminating discussion of this topic. It has been pointed out that "void" is meaningless in an absolute sense; and that unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable

'orders'. In the words of Lord Diplock, "the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue." 4. In view of the above discussion, we are of the view that prima facie the applicants appear to have a good case on merits. We dispense with the predeposit of the duty amount of Rs. 8,38,922.13. We further order that during the pendency of the appeal, the revenue authorities shall not pursue the recovery proceedings. We further direct that to safeguard the interests of the revenue, the applicants shall not alienate their fixed, movable or immovable assets without the prior permission of the Tribunal.

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