SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Elecon Engineering Co. Ltd. Vs. Union of India (Uoi)

Elecon Engineering Co. Ltd. Vs. Union of India (Uoi)

SooperKanoon Citation : sooperkanoon.com/748259

Court : Gujarat

Decided On : Jun-21-2004

Reported in : 2005(185)ELT231(Guj)

Judge : M.S. Shah and; D.A. Mehta, JJ.

Acts : Constitution of India - Article 226

Appeal No. : Special Civil Application No. 4769 of 2004

Appellant : Elecon Engineering Co. Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : Dharmishta Raval, SCGSC

Advocate for Pet/Ap. : Saxena, Adv. for; Trivedi and; Gupta, Advs.

Judgement :

M.S. Shah, J.

1. RULE. Ms DN Raval, learned Senior Standing Counsel for the Central Government waives service of Rule for the respondents. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 6-2-2004 passed by the Customs, Excise and Service Tax Appellate

Tribunal at Mumbai in Stay Application No. 2515/2003 in Appeal No. E/3667/2003 arising out of the Order-in-Appeal dated 29-8-2003.

3. The Maharashtra State Electricity Board had issued a letter of intent to the petitioner - Company on 30-4-1997 for supplying material handling plants for the power project of MSEB. The said project was financed by the World Bank. On 28-8-1995, the Government of India had issued Central Excise Notification No. 108 of 1995 exempting, the supplies, made to the project financed by the World Bank. The petitioner filed declaration dated 27-4-1998 claiming exemption under the aforesaid notification in respect of the goods supplied by the petitioner to the MSEB for the above power project. On the ground that the World Bank had initially suspended and thereafter cancelled the loan for the above power project, the Government of India initiated proceedings for recovery of the duty amounting to Rs. 97,85,964/- in all, covering the period between 8-7-1998 and 15-12-1999. The demand was made through six different show cause notices. The first two show cause notices dated 5-1-1998 and 19-4-1999 came to be discharged by the Assistant Commissioner by his order dated 18-5-1999. However, the Commissioner of Central Excise (Appeals) reversed the said order and held in favour of the Department by his order dated 15-10-2001.

As far as the four other show cause notices are concerned the Assistant Collector confirmed the same on 29-1-2002 and the Commissioner of Central Excise (Appeals) confirmed the said order on 29-8-2003.

When the proceedings in respect of the aforesaid show cause notices issued by the Assistant Commissioner were in different stages of adjudication/appeal, the Additional Director General of Anti-evasion Branch issued show cause notice dated 14-2-2000 covering the entire period between July 1998 and December 1999 in respect of the very same supplies. The said show cause notice was issued on the ground that on 30-6-1998 the World Bank had cancelled the undisbursed loan amount to the MSEB and hence the MSEB project could not be said to be a World Bank assisted project and, therefore, the supplies made to the MSEB for the project in question were not eligible for exemption. The said show cause notice issued by the Anti-evasion branch was confirmed by the Commissioner on 31-8-

2000. When that order was carried in appeal before the Tribunal, the Tribunal passed order dated 14-5-2001 (Annexure 'J') directing the petitioner to make a pre-deposit of Rs. 25 lacs in Appeal No. E/3653-3654 [2002 (147) E.L.T. 702 (Tri.)].

To continue with those separate show cause notices referred to herein-above, when the order dated 15-10-2001 passed by the Commissioner (Appeals) in the first two show cause notices came to be challenged before the Tribunal, the Tribunal passed order dated 22-1-2002 (Annexure 'K') in stay application in the said appeal waiving the pre-deposit in respect of those two show cause notices on the ground that there was a duplication of the duty demand since the supplies were already covered by the show cause notice dated 14-2-2000 issued by the Anti-evasion branch. However, when the stay application filed by the petitioner in the present appeal (No. 3667/03) came up for hearing in connection with the remaining four show cause notices, the Tribunal by its impugned order dated 6-2-2004 directed pre-deposit of Rs. 7 lacs, and on such deposit, waiving the pre-deposit of the balance amount of the duty and penalty during pendency of the appeal.

As regards the petitioner's contention that the demand covered by the four show cause notices under consideration was also a duplication of the demand which was already a part of the show cause notice dated 14-2-2000 issued by the Anti-evasion-branch, the Tribunal observed that, 'the question as to whether the demand is duplication or not, is not one on which prima facie view can be taken, in view of the finding of the Commissioner (Appeals) on the admission of the applicant (which is contested before us).' The Tribunal thereafter observed that since no prima facie case for total waiver was made out by the applicant pre-deposit of Rs. 7 lacs was ordered towards duty.

It is the aforesaid order at Annexure 'A' to the petition which is under challenge in this petition.

4. The learned counsel for the petitioner has submitted that even though the ground for issuance of show cause notice dated 14-2-2000 issued by the Anti-evasion branch may be different, there is no dispute about the fact that the goods

covered by the show cause notice dated 14-2-2000 issued by the Anti-evasion branch covered the very supplies which were the subject matter of the six show cause notices in question and when the Tribunal had already taken the view while deciding the stay application in the appeal in connection with the first two show cause notices that there was duplication of demand in respect of the same goods which were covered by the show cause notice issued by the Anti-evasion branch, there was no justification for the Tribunal not to take the same view while deciding the stay application in the appeal concerning the remaining four show cause notices.

5. In response to the notice issued by this Court, Ms DN Raval, learned Senior Standing Counsel appears for the respondent and submits that the Tribunal was justified in relying upon the finding given by the Commissioner (Appeals) that since the demand made by the Anti-evasion branch was on a different ground, the petitioner was required to make a separate pre-deposit, over and above the pre-deposit made in the appeal arising from the show cause notice issued by the Anti-evasion department. It is further submitted that when the World Bank, had cancelled the loan the petitioner had no case on merits and, therefore, also the order of the Tribunal does not call for any interference. Ms Raval has also relied upon the affidavit-in-reply filed by the Assistant Commissioner, Central Excise, Anand on behalf of the respondents.

6. Having heard the learned counsel for the parties, we are of the view that when there is no dispute about the fact that the supplies covered by the show cause notice dated 14-2-2000 issued by the Anti-evasion department were the same supplies made by the petitioner which were the subject matter of the six separate show cause notices and when the Tribunal had already, after considering the facts of the case, directed the petitioner to make the pre-deposit of Rs. 25 lacs by order dated 14-5-2001 and when the Tribunal gave a finding in its order dated 22-1-2002 that the supplies covered by the two show cause notices were subjected to duplication of duty demand and, therefore, waiver of pre-deposit was ordered, the Tribunal ought to have followed the same order while deciding the stay application in the appeal arising from the remaining four show cause notices, the subject matter of which was already covered by the proceedings taken out by the Anti-

evasion branch of the department. The Tribunal was, therefore, not justified in observing that the question as to whether the demand is duplication or not is not one on which prima facie view can be taken. Even the Department had not contended that the supplies were not the same. Merely because another set of proceedings was initiated on the basis of another ground, that does not dilute the petitioner's assertion that the supplies were the same.

7. At this stage, Ms Raval, learned Senior Counsel for the Central Government submits that in view of the fact that the World Bank had cancelled the loan, the Department is justified in making the demand from the petitioner.

The learned counsel for the petitioner states that it was in view of the certificates issued by MSEB indicating exemption that the petitioner had made the supplies at the price mentioned in the relevant invoices and that MSEB has also been joined as a party in the appeal arising from the proceedings initiated by the Anti-evasion branch of the Department.

8. In the facts and circumstance of the case, while we express no opinion on the merits of the controversy between the parties, we are of the view that the controversy pending before the Tribunal deserves to be decided at the earliest.

9. In view of the above discussion, we are of the view that the order dated 6-2-2004 passed by the Tribunal in Stay Application No. 2515 of 2003 in Appeal No. 3667 of 2003 is required to be set aside and the stay application deserves to be allowed and the same is allowed. Accordingly, in view of the pre-deposit of Rs. 25 lacs as per the Tribunal's order dated 14-5-2001 in Appeal No. 3653-3654 there shall be waiver of the duty and penalty demanded by the Assistant Collector by order dated 29-1-2002 as confirmed by the Commissioner on 29-8-2003, during pendency of Appeal No. 3667 of 2003 before the Tribunal. However, in view of the peculiar facts and circumstances of the case, we direct the Tribunal to hear and decide the appeals being Appeal No. E/3653-3654/2000 together with Appeal No. E/3667 of 2003 and cognate appeals as expeditiously as possible and in any case by 31st December 2004.

Mr Saxena, learned Counsel for the petitioner states that the petitioner will cooperate for expeditious disposal of the appeals before the Tribunal.

10. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent.

The office to issue writ to the Customs, Excise and Service Tax Appellate Tribunal, Mumbai forthwith.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com