

Aurelec Trust Vs. Superintendent of Central Excise

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Court : Chennai

Decided On : Nov-04-1992

Reported in : 1993(63)ELT57(Mad)

Judge : R.R. Mishra, J.

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

Appeal No. : W.P. No. 8297 of 1988

Appellant : Aurelec Trust

Respondent : Superintendent of Central Excise

Advocate for Def. : Shri K. Jayachandran, ACGSC

Advocate for Pet/Ap. : Shri Venkataraman, Adv. for the ;Shri C. Natarajan

Judgement :

ORDER

1. Heard. This Petition is directed against an order of the Customs, Excise and Gold (Control) Appellate Tribunal, rejecting the application for stay of the realization of excise duty of Rupees Three Lakhs and odd and penalty of Rs. 10,000/- and directing the petitioner to deposit the full amount of duty in there monthly installments and submit a report of compliance,

'On their doing so, the condition of pre-deposit of the amount of penalty shall stand waived and recovery thereof shall also remain stayed.'

Petitioner has been dealing in computers. It has been assessee to duty and found liable to penalty as above by the Collector of Central Excise. It has filed an appeal against the Collector's order before the Appellate Tribunal, but has not deposited the demanded duty amount and/or the penalty. It asked for stay of the demand. Section 35F of the Central Excises and Salt Act, 1944, which, it is conceded, has to be applied, says,

'Where in any appeal..... the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied..... the person..... shall pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied :

Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.'

The power to dispense with the deposit of the duty demanded or the penalty levied is circumscribed by the words, 'opinion that the deposit..... would cause undue hardship.... 'and' subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue'. The first requirement is the formation of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to the person who has come in appeal against the revenue demand. Undue hardship has to be understood not merely in the sense of a cash demand that the person in appeals is required to deposit, but would depend upon facts of each case, for example, a person, who realized from the customers a certain amount of revenue and appropriated it, cannot be heard to say that he would be subjected to hardship if he was required to deposit the amount of duty demanded or the penalty levied. Hardship of every kind thus may not justify stay of the demand, pending appeal. The pre-deposit of duty is the rule. Dispensing with such

deposit is an exception. Even if there are materials to show that the deposit of duty demanded or penalty levied would cause undue hardship to the appellant, the Appellate Authority [Collector (Appeals) or the Appellate Tribunal] shall not waive the pre-deposit condition without taking notice of the interests of revenue and without imposing such conditions which would protect the interests of the revenue. Viewed with this and the rule in this behalf indicated in the judgment of the Supreme Court in the case of M/s. Empire Industries Ltd. : [1986]162ITR846(SC) , it is difficult to find any legal error in the order of the Tribunal. The Tribunal has said,

'... we find that no ground of financial hardship has been made out. The appellants have stressed only the merits of the case in their favour. But, prima facie the merits are not so clear in view of paragraph 47 of the Supreme Court judgment in the case of M/s. Empire Industries Ltd. : [1986]162ITR846(SC) , according to which the full intrinsic value of an article has to be assessed for the purpose of levy of central excise duty.'

2. It may, however, be noticed that in W.M.P. Nos. 12095 and 12096 of 1988, a learned single Judge of this Court on 27-7-1985 ordered interim stay of the impugned order and notice. The interim stay has continued ever since. While the petitioner has been benefited by the order of interim stay passed by this Court, the Revenue has suffered for the reason that even the amount, which the petitioner is willing to pay as a condition for the appeal, has not been deposited yet. Learned counsel for the petitioner has stated at the bar that the petitioner is willing to deposit half of the demand of the duty and for the other half willing to give security to the satisfaction of the authority concerned. This, in my opinion, may, in the circumstances of this case, protect the interests of the revenue on the one hand and give to the petitioner opportunity to contest the demand on merits in the appeal. It is almost as a concession and not on account of any error in the impugned judgment that I am inclined to order that it will not be in the interests of either party to allow the proceedings in this Court to continue any further on the question as to whether the pre-deposit condition should be waived and the case should be disposed of on conditions as follows :

(1) The petitioner shall deposit half of the excise duty demanded within eight weeks from today and furnish security for the other half to the satisfaction of the Collector of Central Excise concerned.

(2) The respondents shall accept the said deposit as the condition for the order to keep in abeyance the demand of the penalty levied and to proceed with the hearing of the appeal on merits.

3. This, in my opinion, shall satisfy the interest of the petitioner on the one hand and the interests of the revenue on the other hand. The Petition is disposed of with the directions as above. No costs.

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