

V. Maruthamuthu Vs. Cegat

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Court : Chennai

Decided On : Jan-13-1992

Reported in : 1993(42)ECC315; 1992(60)ELT208(Mad)

Judge : K.S. Bhakthavatsalam, J.

Appeal No. : W.P. Nos. 17874 and 17875 of 1991

Appellant : V. Maruthamuthu

Respondent : Cegat

Advocate for Def. : Shri K. Jayachandran, ACGSC

Advocate for Pet/Ap. : Shri K.R. Thamizhmani, Adv. for ;M/s. Narman Associates

Judgement :

ORDER

1. These writ petitions coming on for orders as to admission on this day, upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of Mr. K. R. Thamizhmani for M/s. Narman Associates, advocates for the petitioner, in each of the petitions and of Mr. K. Jayachandran, Additional Central Government Standing Counsel on behalf of the Second Respondent the court made the following order :-

These writ petitions have been filed for waiver of pre-deposit of a duty of Rs. 6,63,948.06 and a penalty of Rs. 25,000/- on each of the petitioner under the impugned order of the Collector of Central Excise, Coimbatore, dated 20-5-1991.

2. Notice of motion has been ordered by me on 20-12-1991. Mr. K. Jayachandran, Additional Central Government Standing Counsel appeared for the respondents.

3. When the petitioners came before the Tribunal the Tribunal has passed the impugned order even after taking note of the fact stated by the first respondent's representative that the petitioner Manickam one of the petitioners herein, has only immovable property to the extent of Rs. 58,350/- which is a joint property and other partner is financially in a worse position. In my view, the Tribunal having taken note of the fact that both the petitioners are not financially sound, ought not to have directed them to deposit Rs. 1,00,000/- towards duty on or before 31-1-1992. It is true that the entire penalty has been dispensed with. But I am not satisfied that the Tribunal has exercised its discretion properly in this case by asking the petitioners to pre-deposit a sum of Rs. 1,00,000/- considering the facts and circumstances of this case that the both the petitioners are not financially sound. It is well settled that the Tribunal has to take note of the hardship under these Central Excise and Customs Act, 1924. In my view it has not been taken note of by the Tribunal. As such the petitioners are before me.

4. After hearing Mr. K. Thamizhmani, learned counsel for the petitioner and Mr. K. Jayachandran learned Addition Central Government Standing Counsel for the respondents, I am fully satisfied with the case of the petitioners and that the impugned order has to be set aside on condition that the petitioners deposit a sum of Rs. 20,000/- within four weeks from today. On such deposit the Tribunal shall hear the appeal of the petitioners and dispose it of on merits. These petitions are ordered accordingly. No costs.