

intercity Cable Systems (P) Ltd. Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-08-1994

Reported in : (1995)(76)ELT86TriDel

Appellant : intercity Cable Systems (P) Ltd.

Respondent : Collector of C. Excise

Judgement :

1. The above captioned Misc. applications have been filed seeking modification of the Tribunal's interim Order No. Misc./E/247/94-BI, dated 26-8-1994 directing the applicants to deposit the duty amounting to Rs. 36,44,264/- + Rs. 54,878/- within 8 weeks of the date of receipt of the order. Appearing on behalf of the applicants Shri Soli Sorabji, Ld. Sr. Advocate submitted that the Tribunal in passing the Misc. Order No. Misc./E/247/94-BI, dated 26-8-1994 had relied upon the judgment rendered by single judge of Karnataka High Court in the case of Nector Beverages Pvt. Ltd. v. UOI in W.P. No. 1154/88 on 3rd December, 1993, reported in 1994 (70) E.L.T. 172 holding that para 7 of the Notification No. 175/86-C.E., dated 1-3-1986 as amended by Notification No. 223/87, dated 22-9-1987 was not ultra vires of Article 14 of the Constitution of India. He stated that the operation of the said order of the single judge in W.P. No. 1154/88, dated 3-12-1993 had been stayed by the following order passed on 27th January, 1994 in Writ Petition No. 3920/93 by the Hon'ble Karnataka High Court :- "That the operation of the order dated 3-12-1993 passed by this Court in Writ Petition No. 1154/1988, be and the same is hereby stayed until further orders from this Court.

Issued under my hand and the seal of this Court, this the 24th day of January, 1994." Ld. counsel further submitted that in view of the operation of the single judge order in the case of Nector Beverages (P) Ltd. v. UOI having been stayed by the Karnataka High Court, the Tribunal was bound by the Div. Bench judgment of the Allahabad High Court in the case of Machine Well Engg. v. UOI, reported in 1994 (73) E.L.T. 19 and the single judge order of the Calcutta High Court in the case of Banner & Co. v. UOI, reported in 1994 (70) E.L.T. 181 which had struck down para 7 of the Notification No. 175/86-C.E., dated 1-3-1986 (as amended) as ultra vires of Article 14 of the Constitution of India. He submitted that para 7 of the said notification having been held as violative of the Article 14 of the Constitution of India. Tribunal will have to read the said notification by deleting the said para 7. He pleaded that under these circumstances the impugned order confirming the demand was not sustainable. He contended that even if the operation of single judge order in the case of M/s. Nectar Beverages had not been stayed by the Div. Bench of Karnataka High Court the appellants would have a prima facie case in view of the judgment of the Madhya Pradesh High Court in the case of Partap Steel Rolling Mills v. CEGAT, reported in 1993 (67) E.L.T. 216 holding that contrary views expressed by two of the High Courts in the country is sufficient indication that there is prima facie case in favour of the appellants warranting stay/dispensation of the pre-deposit under Section 35 of the Central Excises & Salt Act, 1944. He, therefore, prayed that the Tribunal's Order No.Misc./E/247/94-BI may be modified and the entire amount of duty demanded may be dispensed with unconditionally.

2. On behalf of the respondent Shri Somesh Arora, Ld. JDR submitted that the factual position as outlined in the submissions made on behalf of the applicants was correct. He stated that he was not aware of any further order after 27-1-1994 in Writ Petition No. 3920/1933 by the Karnataka High Court.

3. We have considered the submissions made on behalf of both sides and perused the record of the case. The applicants have filed a copy of the interim order of the High Court of Karnataka dated 27-1-1994 in Writ Petition No. 3924/1933 reproduced above staying the operation of the single judge order of the High Court in the Writ Petition No. 1154/88, dated 3-12-1993 in the case of Nectar

Beverages Pvt. Ltd. v. UOI. No other order of the Hon'ble Karnataka High Court after the Order dated 27-1-1994 in Writ Petition No. 3920/1993 has been brought to our notice. Under these circumstances the judgment of the Div. Bench of the Allahabad High Court in the case of Machine Well Engg. and the judgment of the single judge of the Calcutta High Court in the case of M/s.

Banner & Co. holding the provisions of Para 7 of the Notification No.175/86-C.E., dated 1-3-1986 (as amended) as violative of Article 14 of the Constitution of India have to be deemed as the only pronouncement on this issue. Further as contended by the Ld. Sr. counsel on behalf of the applicants even if the operation of the judgment of the single judge order of the Karnataka High Court in Writ Petition No. 1154/88, dated 3-12-1993 in the case of Nectar Beverages (P) Ltd. had not been stayed, in view of the contrary views expressed by the different High Courts in the country in the matter, there would be sufficient indication of existence of prima facie case in favour of the applicants. Having regard to the overall facts and circumstances of the case we hold that the applicants have been able to make out a prima facie case warranting dispensation of the pre-deposit. We, therefore modify the earlier Order No. Misc./E/247/94-BI and grant unconditional stay of the duty payable in terms of the impugned order.

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