

Jaycee Engg. Services Vs. Cegat

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Court : Chennai

Decided On : Aug-17-2000

Reported in : 2003(90)ECC469

Judge : Y. Venkatachalam, J.

Acts : Central Excise Act - Sections 35F

Appeal No. : Writ Petition No. 9329 of 1993 and W.M.P. No. 14444 of 1993

Appellant : Jaycee Engg. Services

Respondent : Cegat

Advocate for Def. : None

Advocate for Pet/Ap. : S. Rajasekaran, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Y. Venkatachalam, J.

1. Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition seeking for a Writ of Certiorari to call for the records pertaining to Order No. 539/1992, dated 30.10.92 and order passed in

E/Ros/866/93 in E/Stay/147/92, dated 7.4.93 on the file of the respondent herein and to quash the same.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein they have narrated all the facts and circumstances that forced them to file the present writ petition and requested this Court to allow the writ petition as prayed for. Though in this case the respondent has been served as early as on 31.3.94, there is no representation on behalf of them till this date.

3. Heard the arguments advanced by the learned Counsel appearing for the petitioner. I have perused the contents of the affidavit together with all other relevant material documents available on record in the form of typed set of papers, I have also taken into consideration the various points raised by the learned Counsel appearing for the petitioner during the course of their arguments. Since there is no representation on behalf of the respondent and since there is no counter as well, the matter has to be decided on merits.

4. In the above facts and circumstances of the case, the only point that arises for consideration is as to whether there are any valid grounds to allow this writ petition or not.

5. The brief facts of the case of the petitioner as seen from the affidavit are as follows: The petitioner herein is a small-scale manufacturer with SSI certificate. They were manufacturing parts of bottling machine and parts of conveyer in semi-finished state out of the raw materials supplied by M/s. Rita Bottling Machines (Pvt). Ltd., M/s. Leiputs Equipment (Pvt.) Limited & M/s. Leefoot Machines (Pvt.) Ltd., Only a few manufacturing operation were done at their premises and the semi-finished articles which were not an identifiable point of the machine, were sent to M/s. Ritta Bottling Machines (Pvt.) Ltd. The said semi-finished articles were subjected to the following further process at the other end : (i) Tif welding (ii) Heavy machining (iii) Sub-Assembly with other part, puffing, painting, heat treatment, shaping, inspection of components, quality control etc. About 300 components, are made into a sub-assembly and several sub-assemblies go into a whole assembly and finally subject to final inspection and wiring. In some cases, same items of work were done by the petitioner's labour by use or machinery and

facilities available at the other end for which, they have paid 15% to 20% discount. So, the petitioner is supplying only the unfinished and identifiable parts which do not have marketability nor would be used as such only in respect of M/s. Rita Agency, the petitioners have fully manufactured the goods with their own raw material and the quantities of turnover is much below the exemption limit. As the Job work done by the petitioner is below the exemption limit, the petitioner did not take out any licence under the bona fide belief that it is not required, on 29.8.90, the officers attached to the Headquarters preventive. Central Excise Department inspected the petitioner's premises and seized the account books etc. On 27.2.91, the Collector of Central Excise issued a show cause notice stating that during the years 1986-87 to 1989-90, the petitioner have manufactured and cleared parts of bottle filling machines and parts of conveyers without determining their liability to Central Excise duty and without payment of Central Excise duty leviable thereon and hereby contravened the provision of Rule 174 r/w Section 6 of Central Excises and Salt Act, 1944 and also certain other provisions of the said Act and the rules framed hereunder. The petitioner was asked to show cause why penalty should not be imposed and also why excise duty should not be collected: The petitioners submitted their reply dated 15.7.91 and subsequently the Collector of Central Excise heard the counsel of the petitioner and on 27.9.91, he passed the final orders, imposing a sum of Rs. 25,19,009 being the duty due on the excisable goods and also imposed penalty of Rs. 2,50,000 The petitioner herein filed an appeal before the respondent herein in A. No. E/109/92/Mas and alongwith the appeal they also filed a petition for stay of the operation of the order of the Collector of Central Excise. The respondent herein by order dated 13.5.92 has granted stay of the order of the Collector of Central Excise dated 27.9.91 on condition that the petitioner should make a pre-deposit of a sum of Rs. 5,00,000 on or before 31.7.92. The petitioner deposited a sum of Rs. 1,00,000 and filed a petition on 17.7.92 to dispense with the balance of the amount mentioned in the conditional stay order. But however, by order dated 31.7.92, the respondent herein directed the petitioner to deposit balance of the amount by 30.10.92, by extending the time stipulated in the earlier conditional order. Since the petitioner could not comply with the order, on 30.10.92 the respondent seems to have dismissed the appeal itself under Order No. 539/92. The said order was communicated to the

petitioner's counsel on 7.1.93. Thereafter a petition to dispense with the pre-deposit was filed on 24.11.92 in petition E/Ros/866/93 in E/Stay/147/92. The respondent herein by its order dated 7.4.93 had dismissed the said application since the pre-deposit has not been made in terms of the conditional order. However, the respondent made an observation that it is open to the petitioner to make the pre-deposit and take out an application for early hearing of the appeal. But the respondent herein had not considered the claim of the petitioner for dispensing with the pre-deposit. The order has been passed by the respondent without considering the representation of the petitioner and as such the order, dated 7.4.93 initiated on the principles of non-application of mind. Further according to the petitioners, from the proceedings dated 7.4.93 it is clear that the appeal is pending. But however, the petitioner's counsel was served with an Order No. 539/92, dated 30.10.92 as if the appeal itself had been disposed of. Before ever this order was communicated, the petitioner filed the application on 24.11.92 which was dismissed by the proceedings dated 7.4.93. It is also argued by the petitioner that the respondent ought to have considered the request of the petitioner to the pre-deposit since the petitioner's factory had been closed from August 1990, that the respondent ought to have taken into consideration the bona fide conduct of the petitioner in depositing a sum of Rs. 1,50,000 irrespective of the hardship that caused to the petitioner and whereby the petitioner had made a genuine attempt to pay the amount and in spite of his best efforts, the petitioner was not able to comply with the conditional order as the petitioner is genuinely hard-pressed for making the balance of the amount. In such circumstances, the respondent has to apply his mind and consider the bona fide request of the petitioner and has to give a finding as to whether the difficulties placed before the authority are genuine or not, since the respondent had failed to consider the claims of the petitioner on merits, the petitioner has no other alternate remedy except to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6. Having seen the entire material available on record and from the facts and circumstances of the case and also from the claims of the petitioner herein it is admitted even by the petitioner herein that on 29.8.90, the authorities inspected the petitioner's premises and seized the account books etc. Thereafter on 27.2.91

show cause notice was issued and the petitioner also replied on 15.7.91 and subsequently the Collector of Central Excise heard the counsel of the petitioner and on 27.9.91, he passed the final orders, imposing a sum of Rs. 25,19,009 being the duty due on the excisable goods and also imposed penalty of Rs. 2,50,000. The petitioner filed an appeal before the respondent and he also granted stay of the operation of the order of the Collector of Central Excise. But the same was on a condition that the petitioner should make a pre-deposit of a sum of Rs. 5,00,000 on or before 31.7.92. But the petitioner could not comply with the same, and paid only Rs. 1,00,000 and thereafter time was extended to comply with the same by 30.10.92. But even by then the petitioner could not comply with the order. There is no dispute with regard to these aspects. Thus it is crystal clear that the petitioner herein has not complied with the order of the Tribunal dated 31.7.92 even after sufficient time and also extended time was given to comply with the condition imposed. But inspite of all that the petitioner herein failed. That is admitted by the petitioner themselves also. Therefore, the respondent dismissed the appeal itself in terms of Section 35F of the Central Excises and Salt Act. Thereafter on behalf of the petitioner a petition for restoration of the stay application and also a petition to dispense with the pre-deposit was filed. However, the respondent by order dated 7.4.93 had dismissed the said application since the pre-deposit has not been made in terms of the conditional order. Aggrieved by the same the petitioner herein has come forward with the present writ petition contending that the respondent herein had not considered the claim of the petitioner for dispensing with the pre-deposit and that the order has been passed by the respondent without considering the representation of the petitioner and also that as such the order dated 7.4.93 is initiated on the principles of non-application of mind. In the above facts and circumstances of the case of hand such contention of the petitioner herein cannot at all be accepted. Because it is significant to note that in the same order the respondent had made an observation to the effect that it is open to the petitioner to make the pre-deposit and take out an application for early hearing of the appeal. Without doing so, the petitioner herein has rushed to this Court. Another significant aspect in this case is that even after availing time and extended time to comply with the condition imposed by the authority. The petitioner did not comply with the order of the Tribunal. Even in the impugned

order, the respondent has given an opportunity to the petitioner. But without doing so, the petitioner has come forward with the present writ petition. This clearly shows the intention of the petitioner that they want to prolong the issue as long as possible. That being so, having already got the indulgence of the authorities, the petitioner herein is not at all entitled to any indulgence in the hand of this Court in this writ petition. Thus I do not see any merit whatsoever in the various contentions raised by the petitioner in this writ petition challenging the impugned orders herein.

7. Therefore, for all the aforesaid reasons and in the facts and circumstances of the case and also in view of my above discussions with regard to the various aspects of this case, I am of the clear view that the petitioner herein has not made out any case in their favour and that therefore there is no need for any interference with the orders impugned in this writ petition. In support of their case the petitioner herein has relied on a decision reported in *Almin & Close (Pvt.) Ltd. v. Collector of C. Ex & Cus.* : 1991(55)ELT165(Mad) wherein it has been held that when a person comes up with an application expressing difficulties, one has to find out whether the difficulties placed before the authority are genuine and required consideration or not. But in this case on hand it has been proved that even after availing so many opportunities given by the authorities, the petitioner herein has failed to make substantial payment towards the pre-deposit or atleast the amount fixed by the authorities to grant stay of the order of the lower authority. In such circumstances of this case, the above decision is not in any way helpful to the petitioner herein. Thus the writ petition fails and the same is liable to be dismissed for want of merits.

8. In the result, the writ petition is dismissed. No costs. Consequently MP. No. 14444 of 93 also is dismissed.