

SUPREME COURT OF INDIA

Alex Enterprises

Vs.

Union of India

C.A.No.947 of 2004

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

05.03.2009

JUDGMENT

Dr. Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of the Customs Excise and Gold Control Appellate Tribunal, New Delhi (in short the `CEGAT'). By the impugned order the application filed by appellants seeking waiver of the pre deposit of duty amount of Rs.42,90,226/- and penalty of Rs.20,00,000/- confirmed by the Commissioner of Customs. The High Court directed deposit of Rs.42,00,000/- on or before 30.7.2002. Since the amount was not deposited by order dated 7.10.2002, the appeal was dismissed.

2. Learned counsel for the appellant submitted that the CEGAT did not consider the various questions in its proper perspective. The appellant was entitled to the benefits of Rule 16(a) of the *Customs and Central Excise Duties Drawback Rules, 1995* (in short the `Rules') and, therefore, the direction given by the CEGAT was not in order.

3. Learned counsel for the respondent on the other hand submitted that the appellants have been adopting various dilatory methods and have dragged on the whole matter for nearly eight years and no interference is called for in a matter of this nature.

4. A brief reference to the factual scenario needs to be noted. The Tribunal noted with reference to the orders passed by the departmental authorities that the position was as follows: "The perusal of the impugned order shows that the recovery of Rs.42,90,226/- had been ordered to be made from the appellants as they wrongly got this amount as draw back on the basis of 11 shipping bills vide which the export consignments valued at Rs.2,54,30,211/- were sent by them, but the sale proceeds of those consignments have not been so far realized by or on behalf of the appellants in India, within the period allowed under the Foreign Exchange Regulation Act. Therefore they were asked to pay back the amount of the draw back under Section 142 of the Customs Act. The learned counsel has not contested the correctness of the impugned order on merits on any material on record. He has admitted that the sale proceeds of the consignment had not been repatriated in India so far

and that the appellants had availed the drawback of the disputed amount. Therefore, prima facie, we do not find any case in favour of the appellants for allowing them total waiver of the pre deposit of the drawback amount as well as the penalty amount. However keeping in view the facts and circumstances of the case, and the financial hardship of the appellants as pleaded by the learned counsel, we direct the appellants to make pre deposit of the draw back amount of Rs.42 lakhs on or before 30.7.2002. On making this deposit, the requirement to pre deposit the balance drawback amount and the penalty amount shall stand waived and recovery stayed till the disposal of the appeal. However, it is made clear that if the terms of this stay order are not complied with within the stipulated period, then their appeal shall be liable to be dismissed under Section 129B of the Act."

5. As noted above the time was given to deposit Rs.42,00,000/-on or before 10.7.2002. A writ petition was filed against the order of CEGAT i.e. Writ Petition No. 4053 of 2002. The High Court disposed of the writ petition extending the time for making deposit till 30.9.2002 and directed to file compliance before the CEGAT on 7.10.2002. On 7.10.2002 an application for extension of time was filed before CEGAT stating that the appellants were taking steps to file a review/recall application of the order passed in the Writ Petition. The Review Petition is stated to have filed on 11.10.2002. On 22.10.2002 another application for extension of time was filed or stated to have been filed. The Review petition was dismissed as withdrawn on 17.12.2002.

6. It is stated by learned counsel for the appellant that liberty was granted to move another appropriate application seeking modification of the order dated 2.8.2002. On 20.10.2002, CEGAT dismissed the appeal on the ground that the order passed by the CEGAT and the extended time granted by the High Court to make the deposit were not complied with. A writ petition was filed seeking restoration of the appeal which was dismissed by the High Court on 25.3.2003. A writ petition No. 2151 of 2003 was filed with a prayer to set aside/quash the entire subsequent proceedings. The same was dismissed by the High Court on 25.3.2003. The appellants filed a review petition which was numbered as RA No. 3890 of 2003 on the ground that the undue hardship aspect was not considered by the High Court. The same was dismissed by the High Court on 25.3.2003. SLP(C) No. 12435 of 2003 was filed before this court against the said order of the High Court. The same was dismissed on 28.7.2003. On 1.8.2003 the present Civil Appeal was filed.

7. The factual scenario as noted above clearly goes to show that the appellants adopted various dilatory methods and the present appeal is nothing but an abuse of the process of law.

8. Learned counsel for the appellant submitted that the case has not been heard on merits, and the effect of Rule 16(a) of the Rules have not been considered. It is also submitted that some time may be granted to make the deposit. Both the pleas are without any substance. The question of applicability of Rule 16(a) could have been gone into the appeal filed before CEGAT. That stage has not arrived at. The CEGAT was only dealing with the application to dispense with the requirement of pre- deposit.

9. The conduct of the appellant disentitle them from any relief. Therefore this appeal is dismissed as there is no substance in the same. There shall be no order as to costs.