

(1999) 04 AHC CK 0234

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 330 of 1999

Vishwa Ingots (Pvt.) Ltd.

APPELLANT

Vs

CEGAT

RESPONDENT

Date of Decision: April 7, 1999**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35F
- Constitution of India, 1950 - Article 226

Citation: (1999) 84 ECR 838 : (1999) 113 ELT 28**Hon'ble Judges:** M.G. Agarwal, J**Bench:** Single Bench**Advocate:** Rahul Sripat, for the Appellant; Surya Prakash Kesharwani, for the Respondent**Final Decision:** Allowed

Judgement

M.G. Agarwal, J.

By this petition under Article 226 of the Constitution of India, the petitioners, who are appellants before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi challenge an order dated 26th June, 1998 passed by the Tribunal in exercises of powers under the proviso to Section 35F of the Central Excise Act, 1944.

2. I have heard Sri Rahul Sripat, learned Counsel for the petitioners and Sri Surya Prakash, learned Standing Counsel for the respondents. No counter-affidavit is proposed to be filed and the writ petition has been finally heard and is being disposed of at the admission stage.

3. The Commissioner, Central Excise, Meerut-I has, by an order dated 12th November, 1997, levied excise duty in the sum of Rs. 30,51,033/- and has levied a penalty in the same sum on the petitioner M/s. Vishwa Ingots (Pvt.) Ltd. In addition personal penalty has also been levied on certain officials of the Company and the owner of the truck. The present petitioners M/s. Vishwa Ingots (Pvt.) Ltd. and N.K.

Dhiman have preferred appeals against the Commissioner's order to the said Tribunal. u/s 35F of the Act, the person desirous for appealing has to deposit with the adjudicating authority the duty demanded or the penalty levied. Thus, without depositing of the said amount, the appeal cannot be entertained by the Tribunal.

4. The proviso to Section 35F however, authorises the appellate authority to dispense with such deposit subject to such condition as it may deem fit, if it is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person. It is in the exercise of this power that the petitioners appealed to the Tribunal to waive the condition of pre-deposit. Their case was that the levies aforesaid are unjustified and they have a strong arguable case in the appeal and that their financial position is very bad and the Petitioner No. 1 has approached the Board for financial and industrial reconstruction under the Sick Industrial Companies (Special Provisions) Act for rehabilitation. The Tribunal by the impugned order has held that so far as the merits of the case are concerned, detailed evidence will have to be gone into and this can be done only when the appeals are taken up and that the matter is highly contentious. It, therefore, observed that the petitioners have not made out a strong prima facie case for waiver.

5. I have been taken through the impugned order passed by the Tribunal. The Act places a serious curb on the right of appeal under the Act by requiring the appellant to first deposit the adjudicated dues. The proviso empowers on the appellate authority to reduce the rigor of this restriction by partially or wholly waiving the condition of pre-deposit. Since the pre-deposit involves the finances of the appellants, the financial aspect of the appellants is the major determinant for exercising the powers under the proviso. The merits of the case have a secondary place. Even if an appellant has no merit in appeal, the appeal cannot be dismissed summarily because the Tribunal has no power to summarily dismiss an appeal. It has to be disposed of on merits and that cannot be done unless a pre-deposit is made u/s 35F of the Act and if a person has no means to make the deposit his right to appeal will be nullified if the power given under the proviso is not exercised in his favour. Therefore, the financial aspect of the matter has primacy and a perusal of the impugned order passed by the Tribunal shows that the financial situation of the petitioners has been given a go-bye by the Tribunal and it has based its order mainly on the merits of the petitioner's case and coming to the view that the appellants have not made out a strong prima facie case, though at the same time it mentions that the matter is highly contentious. In my view, therefore, the Tribunal has not properly disposed of the petitioners' application for dispensing with the pre-deposit in terms of the proviso to Section 35F.

6. This writ petition is, therefore, allowed. The impugned order dated 26th June, 1998 is set aside. The Tribunal shall dispose of the application of the petitioners afresh, in accordance with law.