

(2004) 06 BOM CK 0016

Bombay High Court

Case No: Writ Petition No. 1336 of 2004

Maina Khemka

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: June 16, 2004

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 35F

Citation: (2004) 170 ELT 3

Hon'ble Judges: R.M. Lodha, J; J.P. Devadhar, J

Bench: Division Bench

Advocate: S.N. Kantawala, instructed by Kantawala and Co, for the Appellant; A.S. Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Rule. Returnable forthwith.

2. Mr. A.S. Rao, Advocate waives service for the respondents.

3. By consent of the learned Counsel for the parties, rule is heard finally at this stage.

4. The learned Counsel for the petitioner invited our attention to the judgment of the Customs, Excise & Gold (Control) Appellate Tribunal, Eastern Bench, Kolkata dated 29th October, 2002. The learned Counsel for the petitioner also submitted that the Tribunal was not right in observing in its order dated 11th February, 2004 that no financial hardship is pleaded. The learned Counsel for the petitioner also submitted that in its order dated 22nd February, 2004 seeking modification of the order dated 11th February, 2004 the Tribunal misconstrued the judgment of this Court in [Baron International Ltd. Vs. Union of India \(UOI\)](#), .

5. On the other hand/ Mr. A.S. Rao, the learned Counsel for the respondents justified the order passed by the Tribunal.

6. The Tribunal was not right in observing in its order dated 11th February, 2004, that no financial hardship is pleaded by the petitioner in her application seeking dispensation of the pre-deposit. In Paragraph (f) of the application dated 27th September, 2002 seeking dispensation of pre-deposit, the petitioner has clearly stated that she was not in a position to offer any security. This obviously means that the petitioner is not in a financial position to comply with the condition of pre-deposit. When the application seeking modification of the order dated 11th February, 2004 was made by the petitioner, the petitioner re-iterated that she was not in a financial position to comply with the pre-deposit and that financial hardship would be caused to her if she was directed to pre-deposit the penalty. In the application for modification she filed Income Tax returns for the years 2001-2002, 2002-2003 and 2003-2004 along with the auditor's report for the balance sheet as on 31st March, 2004 showing that she did not have sufficient income. Baron International Limited reference of which has been made by the Tribunal in its order dated 22nd April, 2004 does not hold that the Tribunal cannot modify its order. In Baron International Ltd. the Division Bench of this Court though held that the Tribunal cannot exercise review jurisdiction but the party before the Tribunal can always seek modification of the order. It would be, thus, seen that the Tribunal had jurisdiction to modify its order dated 11th February, 2004 within the permissible limits and parameters laid down in law. Moreover, the Tribunal's order dated 29th October, 2002 in the case of M/s. R.K. Impex & A.K. More justify the dispensation of pre-deposit in the present case.

7. We, accordingly, set aside the orders dated 11th February, 2004 and 22nd April, 2004 and direct the Tribunal to hear the petitioner's appeal without insisting on compliance of pre-deposit.

8. No costs.