

(1999) 05 CAL CK 0026

Calcutta High Court

Case No: Writ Petition No. 1048 of 1999

Ruby Rubber Industries

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision: May 17, 1999

Acts Referred:

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

Citation: (2000) 68 ECC 50 : (2000) 115 ELT 621

Hon'ble Judges: Ajoy Nath Ray, J

Bench: Single Bench

Advocate: Chakraborty, for the Appellant; Roy Choudhury, for the Respondent

Judgement

Ajoy Nath Ray, J.

This is a writ petition in regard to the pre-condition of deposit ordered by the CEGAT by its reasoned and considered order dated 13-2-1999.

2. Pursuant to an earlier order of the Writ Court the matter was reconsidered and deposit of Rs. 20 lac. was called for, plus Rs. from each applicant towards penalty.
3. In passing that order the Tribunal halved the total claim observing that prima facie according to them the case was arguable from both sides.
4. It is now settled law that in determining the amount of pre-deposit the Tribunal takes into consideration both the financial aspect and the prima facie case.
5. The levy of duty and penalty has come upon a finding that several allegedly different legal persons are in fact one and controlled by one Sriram Bhuwalka, who is the head of the H.U.F.
6. The names of these legal persons are given at page 4 of the writ petition - some are partnerships and one is a company.

7. In the impugned order the Tribunal has observed that: "The real face can be seen only after piercing the veil."

8. For my part I have great doubts whether in Excise matters the concept of piercing the veil can be extended if the persons are maintaining different legal status in regard to other statutory authorities like Income Tax, Sales-tax etc.

9. On this *prima facie* opinion it is possible to pass an interim stay order and keep the writ pending, but that will not be just to either of the parties. As such the writ application is finally disposed of by ordering that in regard to the pre-condition of deposit the impugned order shall be substituted by this order, that, upon deposit of Rs. 11,50,000/- by Mr. Chakraborty's clients within a period of four weeks from date hereof, the Tribunal shall accept the same as a sufficient compliance of Section 35F and proceed to hear the appeal. To that extent the impugned order shall stand substituted and modified.

10. In spite of requests by Mr. Roy Chowdhury I did not permit filing of affidavits. Allegations and submissions in the petition, however, cannot be taken as admitted on his part.

11. The order and observations will not in any manner affect the decision of the Tribunal in the appeal on merits.

12. The order and observations are generally *prima facie* and made only for the purpose of explaining the substance of the order which is made.

13. Parties, Tribunal and all others concerned will act on an authenticated copy of the Dictated Order on the usual undertakings.