

**HIGH COURT OF GUJARAT (D.B.)****GUJARAT ELECTROMELT LIMITED***Versus***UNION OF INDIA****Date of Decision:** 08 September 1999**Citation:** 1999 LawSuit(Guj) 451**Hon'ble Judges:** [B C Patel](#), [A M Kapadia](#)**Eq. Citations:** 2000 1 GLR 191, 2000 1 GCD 833**Case Type:** Special Civil Application; Special Civil Application**Case No:** 6370 of 1999; 6371 and 6372 of 1999**Subject:** Customs, Excise**Acts Referred:**[Central Excise Rules, 1944 R 96ZO](#)**Final Decision:** Petition allowed**Advocates:** [K S Nanavati](#), [Trivedi](#), [Nanavati Associates](#), [Mukesh R Shah](#), [Asim J Pandya](#)**Cases Referred in (+): 1****B. C. PATEL, J.**

**[1]** Rule. Mr. Asim Pandya, learned Advocate waives service of rule. At the request of the learned Advocates for the parties, the petitions are taken up for final disposal today.

**[2]** For three different periods, three different show-cause notices were issued which were culminated into the order at Annexure 'C' whereby the Assistant Commissioner, Division II, Central Excise, Mehsana, confirmed the demand of Rs. 15,55,554/- raised vide show-cause notice mentioned in the order and imposed a penalty of Rs. 15,55,554/- under third proviso to sub-Rule 3 of Rules 96 ZO of the Central Excise Rules, 1944. The Assistant Commissioner also assessed the assessee to pay interest at the rate of 18% on the amount outstanding for the period from due date till the actual payment of the sum as confirmed under Section 96 ZO (3) of the Act. The said order was challenged by three different appeals and stay applications were also preferred.

The Commissioner (Appeals), Central Excise and Customs, Ahmedabad, vide Annexure 'E', directed the appellants to pre-deposit Rs. 15,55,554/- towards duty amount by 25-8-1999 and proof thereof by 31-8-1999. So far as the amount of penalty is concerned, the same has been waived till disposal of the appeals. It is against this order passed by the Commissioner (Appeals), Central Excise & Customs, Ahmedabad, the present petitions are preferred.

**[3]** The applicant in the stay applications pointed out that the Registrar for the Board for Industrial and Financial Reconstruction, Government of India, New Delhi, addressed a letter dated 22-1-1998 to the Commercial Manager of the applicant company in which it was stated that the company's reference was received on 8-12-1997 which stood registered as Case No. 9 of 1998.

**[4]** In para 15 of the application, it is stated that the applicant unit is a sick unit before the B.I.F.R. and that in view of the applicant's meagre source of finance it is very difficult to pay such huge amount. Thus, it is very clear that the provisions contained in the Sick Industrial Companies (Special Provisions) Act, 1985 are applicable. Mr. Trivedi, learned Advocate appearing for the applicant, submitted that the Apex Court in the case of Real Value Appliances Limited v. Canara Bank & Ors., 1998 (93) Comp. Cases 26 (SC) considered the provisions contained in Secs. 15, 16 and 22 of the Act. The Apex Court pointed out as under :

" It is to be noticed that according to Sec. 22, in case an "inquiry under Sec. 16" is pending, then notwithstanding anything in the Companies Act, or any other instrument, etc., no proceedings for the winding up of the Company or for execution or distress or the like against the property of the Company or for the appointment of a receiver and no suit for recovery of money or enforcement of any security or of any guarantee shall lie or be proceeded with further, except with the consent of the Board or as the case may be, by the appellate authority. Sec. 22A permits the Board to pass certain conditional orders."

In view of the fact that the applicant unit is a sick unit that aspect ought to have been taken into consideration.

**[5]** The Apex Court in the case of Sangroid Remedies Limited v. Union of India, 1998 (103) ELT 5 (SC), has held as under :

".... Further, there is one other factor in this case and that is the appellant has since been declared as a sick industry by an order dated 23rd April, 1998 by the Board for Industrial and Financial Reconstruction.

In these circumstances, we are of the view that directing the appellant to pay the excise duty as determined as a condition for hearing the appeal, is not sustainable."

**[6]** In this view of the matter, the order passed by the Commissioner on the stay applications insofar as it relates to pre-deposit is required to be quashed and accordingly it is quashed. It is further directed that the appeals shall be heard and disposed of without insisting for pre-deposit.

**[7]** It goes without saying that there shall be no coercive process for recovery of the amount. Mr. Pandya, learned advocate for the respondent, submitted that it is open for the revenue to approach the B.I.F.R. for sanction to recover the amount. As the law permits, it would be open for the revenue to approach the B.I.F.R. for such sanction.

**[8]** Petitions stand allowed and Rule is made absolute accordingly. There shall be no order as to costs.

Petition allowed.

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