

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2336 OF 2014

M/s.Century Enka Ltd.

.. Petitioner

Vs.

Union of India and others

.. Respondents

Mr.D.B.Shriff, Sr. Advocate i/b Chitnis & Co. for the Petitioner

Mr.Pradeep S. Jetly with Mr.J.B. Mishra for the Respondent.

Mr.S.M.Shety, Inspector Central Excise is present.

**CORAM : S.C.DHARMADHIKARI &
G.S.KULKARNI, JJ.**

DATED : 28th MARCH, 2014.

P.C. :

1 When this Writ Petition was called out and argued for some time, Mr.Jetly appearing for the respondents raised a preliminary objection to its maintainability on the ground that the petitioners have an alternate and equally efficacious remedy that of Appeal to the Central Excise and Service Tax Appellate Tribunal in terms of section 35B of the Central Excise Tax 1944. Our attention is also invited to the provisions enabling the petitioners to file an application for stay and waiver of the condition of pre-deposit of duty and penalty. It is submitted that this remedy is efficacious and therefore, the Writ Petition be not entertained.

2 After the matter was argued for some time, Shri Shroff, learned Senior Counsel appearing for the petitioner, on instructions, prays for leave to withdraw the petition with liberty to file such an Appeal.

3 However, Mr.Shroff submits that after the order of adjudicating authority, a communication has been received from the Office of the Superintendent of Central Excise, Range-III, Mahad Division dated 14th March 2014 by which the department has directed that the petitioner shall not shift/sell/transfer any of the machinery, components, spares, raw materials, semi finished or finished goods from their unit at MIDC Mahad. It is submitted that this communication is addressed to M/s.Raigad Processors Ltd and Konkan Synthetic Fibres, both are units of the present petitioners.

4 Mr.Shroff submits that when such communications are addressed, the respondent may resort to coercive means and to recover the amount of duty and penalty. In these circumstances, the remedy of Appeal and equally to seek stay, would be rendered infructuous.

5 Bearing in mind above request, we called upon Mr.Jetly for the respondents to make an appropriate statement so as to enable the petitioner to avail of the alternate remedy and also seek interim protection therein. In all fairness, it is stated that the respondents and without prejudice to their rights and contentions shall not take any coercive measures to recover the duty and penalty demanded for a period of three months from today.

6 This statement made by Mr.Jetly, on instructions, is accepted as undertaking given to this Court.

7 In view of the remedy which is available and which we find equally efficacious that this Writ Petition is allowed to be withdrawn with liberty to file an Appeal, we clarify that we have not expressed any opinion on the rival contentions and each of them are open to be raised before the Appellate Tribunal.

8 Writ Petition is accordingly disposed of accordingly.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)