

(2013) 04 P&H CK 0056

High Court Of Punjab And Haryana At Chandigarh

Case No: Central Excise Appeal No. 32 of 2013

Carrier Air-Conditioning and
Refrigeration Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision: April 30, 2013

Acts Referred:

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

Citation: (2013) 21 GSTR 245 : (2013) 62 VST 436

Hon'ble Judges: Ritu Bahri, J; Hemant Gupta, J

Bench: Division Bench

Advocate: M.P. Devnath, for the Appellant; Suneesh Bindlish, for the Respondent

Final Decision: Disposed Off

Judgement

Hemant Gupta, J.

The present appeal u/s 35G of the Central Excise Act, 1944 (for short the "Act") arises against an order passed by the Custom, Excise and Service Tax Appellate Tribunal, New Delhi (for short the "Tribunal") on March 15, 2013 (annexure A1), whereby the appellant was directed to deposit an amount of Rs. 6,50,00,000 constituting approximately 50 per cent. of the levy attributable to booking commission, service commission and warranty services. The adjudicating authority raised a demand of Cenvat credit of Rs. 50,92,18,368 and also that of interest and penalty. The said amount includes annual maintenance services of Rs. 37,75,54,356 whereas the remaining amount is towards booking commission, service commission and warranty services. The Tribunal has waived the deposit of amount of annual maintenance and ordered 50 per cent. of the remaining levy. The appellant has sought the intervention of this court on the following substantial questions of law:

(I) Whether the learned Tribunal was justified in passing the impugned order dated March 15, 2013 ordering pre-deposit to the tune of Rs. 6,50,00,000 in the facts and

circumstances of the present case ?

(II) Whether the learned Tribunal was justified in passing the impugned order dated March 15, 2013 ordering pre-deposit to the tune of Rs. 6,50,00,000 in the facts and circumstances of the present case when the entire issue is covered by the rulings of the learned Tribunal in favour of the appellants ?

(III) Whether in the facts and circumstances of the present case, the hon"ble Tribunal ordering pre-deposit to the tune of Rs. 6,50,00,000 when the demand itself has no legs to stand on and when the learned Tribunal itself states that the matter is eminently arguable in nature ?

(IV) Whether in the facts and circumstances of the present case the hon"ble Tribunal ordering pre-deposit to the tune of Rs. 6,50,00,000 when a substantial portion of the duty is time barred ?

(V) Whether the order dated March 15, 2013 is erroneous, unjust, incorrect and unsustainable in law and facts ?

2. The argument of the learned counsel for the appellant is that the amount paid by the appellant towards the booking commission, service commission and warranty services is part of the input services and therefore, the appellant is entitled to the benefit of input credits and has rightly claimed such credit.

3. Whether the services so provided is part of input services is the question which is yet to be examined by the Tribunal. Though the adjudicating authority has raised the demand against the said services, the Tribunal has rightly not analysed in detail the provisions related to such services, leaving it to be decided at the time of substantive adjudication. The question raised is that of interpretation of statutory provisions. Therefore, any observation either way by the Tribunal or by this court may prejudice the parties to the lis. Therefore, a detailed examination on the question of interpretation of statutes not be commented upon at the stage of waiver of pre-deposit. The appellant has already been granted complete waiver of annual maintenance charges and 50 per cent. of the duty demanded against booking commission, service commission and warranty services. The discretion exercised by the Tribunal cannot be said to be unjust or irrational which may give rise to any substantial question of law. We may notice that the appellant has not setup a case of financial hardship.

4. We find that the claim of input services by the appellant is a debatable issue and cannot be said to be patently untenable or without jurisdiction. We do not find any reason to entertain the present appeal as no substantial question of law arises for consideration.

5. However, the appellant is permitted to deposit the said amount within a period of six weeks from today. It shall also be open to the appellant to move an application before the Tribunal for early hearing of the appeal. Disposed of accordingly.