

(1994) 05 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Writ Petition No. 14422 of 1992

Rehal Industries

APPELLANT

Vs

CEGAT

RESPONDENT

Date of Decision: May 30, 1994

Acts Referred:

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

Citation: (1994) 55 ECR 666 : (1995) 75 ELT 731

Hon'ble Judges: Ashok Bhan, J; Amrit Lal Bahri, J

Bench: Division Bench

Advocate: P.C. Goyal, for the Appellant; Ashok Jindal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.L. Bahri, J.

Order, Annexure P-6, is impugned in this writ petition filed by the petitioner. By this order, the application for exempting the petitioner from depositing the duty levied before filing of the appeal was dismissed.

2. After hearing the learned counsel for the parties and going through the pleadings as contained in the writ petition and the written statement, we are of the view that the impugned order is liable to be quashed as the provisions of Section 35F of the Central Excises & Salt Act, 1944 were not taken into consideration by the Tribunal. Section 35F of the said Act reads as under :-

"Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied :

Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue."

3. It was incumbent upon the Tribunal while disposing of the application filed alongwith the appeal to find out as to whether the deposit of duty demanded or penalty levied would cause undue hardship to the appellant (present petitioner). This ground was not adverted to while passing the impugned order. However, otherwise on merits some observations were made regarding correctness of the decision of appeal. Thus, while quashing the impugned order, P-6, we direct the Tribunal to re-decide the same as required u/s 35F of the Act aforesaid.

The parties, through their counsel, are directed to appear before the Appellate Tribunal on 4-7-1994.