Victory Impex Vs Commissioner of Central Excise

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 31, 2012

Acts Referred: Central Excises and Salt Act, 1944 â€" Section 3

Citation: (2013) 287 ELT 38 : (2013) 20 GSTR 432

Hon'ble Judges: G.S. Sandhawalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Jagmohan Bansal, for the Appellant; D.D. Sharma, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ajay Kumar Mittal, J.
This order shall dispose of CWP Nos. 8433, 8526, 8547 and 8688 of 2012 as identical issues are involved

therein. For brevity, the facts are extracted from CWP No. 8433 of 2012. Written statements in all the petitions (except CWP No. 8688 of 2012)

filed on behalf of respondent No. 1 today in Court are taken on record.

2. CWP No. 8433 of 2012 has been filed against the stay order dated 9-2-2012 (Annexure P-3) passed by the Customs, Excise and Service Tax

Tribunal, New Delhi (in short ""the Tribunal"") holding that the appeal of the petitioner would be dismissed automatically without any further hearing

in the case on account of non-deposit of an amount of Rs. 2.5 crores by M/s. Vishwakarma Alloys Ltd. (M/s. VAL) as directed in the impugned

order dated 9-2-2012.

3. The facts relevant for disposal of the present writ petition as narrated therein are that respondent No. 1 levied duty u/s 3 of the Central Excise

Act, 1944 (hereinafter referred to as ""the Act""). As per the said Section, the goods specified in First Schedule or the Second Schedule of the

Central Excise Tariff Act and manufactured in India shall be subject to duty at the rate specified in the tariff. The duty levied u/s 3 of the Act can be

discharged by way of payment in cash or it may be paid by utilizing Cenvat credit, i.e. duty paid on inputs. As per the Cenvat Credit Scheme, any

assessee paying duty on inputs or capital goods which are used in the manufacture of finished goods is entitled to credit of duty paid on inputs and

capital goods and the same is credited in books like credit in pass-book in banking system. The credit entered in the registers can be used for the

payment of duty on finished goods and the amount in the credit balance is debited at the time of discharge of duty liability. The petitioner during the

period in question i.e. 2002-04 was registered with the Department as a registered dealer. Investigation was conducted against M/s. VAL and the

factory premises were inspected on 19-4-2006. During search, shortage of raw material was noticed and a show cause notice regarding the same

was issued to M/s. VAL. During enquiry regarding past transactions, it was found that M/s. VAL was purchasing raw material from various

registered dealers including the petitioner and was taking Cenvat credit on the basis of invoices issued by the said dealers. During the period in

question, the petitioner sold scrap involving duty amounting to Rs. 7,26,153/- to M/s. VAL. After completion of investigation, respondent No. 1

issued a show cause notice dated 3-9-2007 calling upon the petitioner to show cause as to why penalty under Rule 25 of the Central Excise Rules,

2002 be not imposed upon it. It was also mentioned in the show cause notice that the petitioner and other dealers have only supplied invoices to

M/s. VAL and have not sold the material. The reply to the said show cause notice was filed. Respondent No. 2 vide order dated 6-5-2010

imposed penalty of Rs. 7,26,153/-, i.e. equal to the amount of credit passed to VAL. Feeling aggrieved, the petitioner as well as VAL and various

other dealers and transporters filed appeals before the Tribunal. Along with the appeal, stay applications were also filed. The said applications

came up for hearing on 9-2-2012 before the Tribunal. The Tribunal vide order dated 9-2-2012 directed VAL to make pre-deposit of Rs. 2.5

crores within a period of eight weeks. However, the requirement of pre-deposit in the case of all the dealers was dispensed with and it was

ordered that in case M/s. VAL fails to make pre-deposit, the appeals of all the parties would stand automatically dismissed. Hence, the present

writ petition against the impugned order.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner submitted that the Tribunal had erred in directing that non-deposit of Rs. 2.5 crores as duty by M/s. VAL

would result in automatic dismissal of all the appeals without any further hearing. According to the learned counsel, a person who had not

committed any default, could not be penalized for the same. Elaborating his submissions, it was urged that in case M/s. VAL who is required to

make a pre-deposit did not comply with the order of the Tribunal, the observations of the Tribunal that non-deposit by M/s. VAL would result in

automatic dismissal of all the appeals including the appeal of the petitioner was against the well recognized legal principles that no one other than

the defaulter can be penalized for his own defaults.

6. In the written statement respondent No. 1 though has tried to support the order passed by the Tribunal but a perusal of the same shows that no

plea has been raised therein except to plead that the impugned order is in accordance with law.

7. After heading learned counsel for the parties, we are of the opinion that the observations of the Tribunal against the petitioner cannot be legally

sustained. The Tribunal while adjudicating the stay application of the petitioner had waived the condition of pre-deposit fully. However, M/s. VAL

has been directed to deposit Rs. 2.5 crores as a pre-condition for hearing the appeal. In such a situation, the tribunal was not justified in holding

that failure to deposit Rs. 2.5 crores by M/s. VAL would automatically result in dismissal of appeal of the petitioner. Law fastens liability on the

defaulter and it is the defaulter who can be penalized for its own act unless otherwise expressly provided under any statutory authority. The

respondents have failed to show any provision of law or statutory authority whereby the non-deposit of amount by M/s. VAL would entail

automatic dismissal of appeal of the petitioner when the condition of the pre-deposit in the case of the petitioner has been waived completely.

8. Accordingly, it is held that the Tribunal was not right in ordering that the appeal of the petitioner shall stand automatically dismissed in case the

amount by M/s. VAL as directed by the Tribunal is not deposited. In other words, the appeals filed by the petitioners, irrespective whether the

amount is deposited by M/s. VAL Ltd. or not shall be heard on merits as the Tribunal had already granted waiver from pre-deposit in the case of

the petitioners. In view of the above, the present petitions are allowed and the impugned stay order dated 9-2-2012 shall stand modified to the

extent as indicated above.