

(2014) 04 P&H CK 0250

High Court Of Punjab And Haryana At Chandigarh

Case No: Central Excise Appeal No. 51 of 2012 (O&M)

Surtex India Ltd.

APPELLANT

Vs

Customs, Excise and Service Tax
Appellate Tribunal

RESPONDENT

Date of Decision: April 28, 2014

Acts Referred:

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

Citation: (2014) 28 GSTR 325

Hon'ble Judges: Jaspal Singh, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Anand Chhibbar, Senior Advocate with Vaibav Sahni, Advocate for the Appellant; Sukhdev Sharma, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.

Civil Miscellaneous No. 31708-CII of 2012

1. The civil miscellaneous is allowed and the delay of 71 days in refiling the appeal is condoned.

Central Excise Appeal No. 51 of 2012

This appeal has been preferred by the assessee u/s 35G of the Central Excise Act, 1944 (in short, "the Act") against the order dated December 13, 2011 (annexure A1) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (in short, "the Tribunal") and for setting aside the orders dated June 9, 2009 (annexure A3) passed by respondent No. 2 and dated March 8, 2010 (annexure A5) passed by the Tribunal.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee was issued letter of permission dated March

22, 1994 to establish a 100 per cent export-oriented unit (EOU) for manufacturing and export of home furnishings. After completion of various formalities, the assessee imported capital goods valued at Rs. 6,24,94,390, raw material value at Rs. 12.17 lakhs and also procured raw material to the tune of Rs. 30.45 lakhs from the market. After importation, the capital goods were installed in the export-oriented unit for manufacture of goods for export. The assessee also reported the date of commencement of commercial production on April 1, 1998 to the Development Commissioner, in compliance with Condition 3 of letter of permission. This fact was admitted in the show-cause notice dated May 23, 2002 issued by the Development Commissioner. On August 25, 1999, the Superintendent, Central Excise Range II, Panipat visited the factory and found the unit running. By utilising the imported capital goods imported raw materials and raw material procured from the local market, the assessee manufactured goods for export and goods valued at Rs. 63.80 lakhs. The Development Commissioner vide letter dated September 12, 2002 ordered for cancellation of letter of permission. However, during the personal hearing on November 26, 2002, the Development Commissioner withdrew the order of cancellation of letter of permission and restored the export-oriented unit status. The approval for revocation of order of cancellation of letter of permission was conveyed to the assessee vide letter dated December 3, 2002. The appellant export-oriented unit was allowed in-principal debonding vide letter dated November 29, 2002 on the ground to pay duty on goods, lying in stock or to export the same. Accordingly, the assessee worked out the duty liability of Rs. 12,15,599 as per paragraph 5(a) of the notification dated June 3, 1997 which provided the clearance of capital goods on payment of the amount equal to the customs duty leviable on such goods on depreciated value and the rate in force on the date of payment of such duty. The assessee deposited the liability of Rs. 12,15,599 vide the challan dated January 31, 2003 as custody duty on the depreciated value of the capital goods and informed the Department in this regard vide letter dated February 28, 2003. The Department issued a show-cause notice dated August 18, 2004 for recovery of differential duty and interest and imposition of penalty. The assessee filed a reply dated October 29, 2004 to the said show-cause notice. The Commissioner vide order dated November 29, 2005 confirmed the duty and ordered recovery of interest and imposing penalties on the company as well as directors, Shri Surender Pal Singh and Ravinder Pal Singh. Feeling aggrieved, the assessee filed an appeal along with an application for waiver of pre-deposit before the Tribunal. The Tribunal vide the interim order dated March 16, 2006 allowed the application and the pre-deposit of the remaining amount of duty and penalty was waived for hearing of the appeal. However, the Tribunal vide the final order dated January 22, 2009 (annexure A2) set aside the order of the Commissioner and remanded the matter for de novo consideration keeping the issue open. The Commissioner vide the order dated June 9, 2009 (annexure A3) confirmed the order dated November 29, 2005 except the interest liability. Being dissatisfied, the assessee filed an appeal along with the stay application (annexure A4) before the

Tribunal. The Tribunal vide the order dated March 8, 2010 (annexure A5) directed the assessee to pre-deposit Rs. 1,00,00,000 as a condition precedent for hearing of the appeal. The assessee filed an application dated May 4, 2010 (annexure A6) for modification of the order dated March 8, 2010 (annexure A5). The Tribunal vide the order dated December 13, 2011 (annexure A1) dismissed the application. Thereafter, the Department issued notice dated October 15, 2012 (annexure A7) to the assessee for recovery of arrears of customs duty. Hence, the present appeal.

3. The learned counsel for the appellant submitted that the liability has been illegally fastened on the appellant. It was urged that the requirement of Rs. 1,00,00,000 as a pre-deposit as directed by the Tribunal was unfair and excessive under the circumstances.

4. The learned counsel for the Revenue opposed the prayer made by the learned counsel for the appellant and submitted that the amount as directed by the Tribunal was reasonable and justified.

5. The primary dispute that arises for consideration in this appeal relates to the quantum of pre-deposit to be made by the appellant as a condition precedent for the hearing of the appeal by the Tribunal. After hearing learned counsel for the parties and keeping in view the totality of the facts and circumstances of the case, a sum of Rs. 30 lakhs in addition to the amount already deposited, be deposited as a condition precedent for hearing of the appeal by the Tribunal which would meet the ends of justice.

6. The appeal stands disposed of accordingly. A prayer was made by the learned counsel for the appellant to grant the time for pre-deposit. In the interest of justice, we allow the appellant to deposit the amount of Rs. 30 lakhs in addition to the amount already deposited, up to June 30, 2014. It is directed that if the appellant in the present case deposits the amount of Rs. 30 lakhs as directed by June 30, 2014, the appeal shall be heard on merits by the Tribunal in accordance with law.