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(2014) 06 P&H CK 0078

High Court Of Punjab And Haryana At Chandigarh

Case No: Central Excise Appeal No. 51 of 2014 (OandM)

Jai Sidh Yogi Steel Rolling Mills		APPELLANT
	Vs	
Commissioner of Central Excise and Service Tax		RESPONDENT

Date of Decision: June 30, 2014

Acts Referred:

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

Citation: (2015) 320 ELT 79 : (2014) 28 GSTR 572

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

Bench: Division Bench

Advocate: Ish Puneet Singh, Advocate for the Appellant

Judgement

Ajay Kumar Mittal, J.
This order shall dispose of a bunch of three appeals bearing Central Excise Appeal Nos. 51, 52 and 53 of 2014 as according to the learned counsel for the appellant, the issue involved in these cases is identical. For brevity, the facts are being extracted from Central Excise Appeal No. 51 of 2014. This appeal has been preferred by the assessee under section 35G of the Central Excise Act, 1944 (in short "the Act") against the impugned order dated April 30, 2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal"), claiming the following substantial questions of law:

"(i) Whether the impugned order dated April 30, 2014 passed by the learned Tribunal is contrary to law and facts?

(ii) Whether the appellant is entitled for his appeal to be considered on merits by the Customs, Excise and Service Tax Appellate Tribunal as the appellant-company is facing

financial hardships?

(iii) Whether there is a prima facie case in favour of the appellant?

(iv) Whether per se actual demand against the appellant be sustained?

(v) Whether undue hardship would be caused to the appellant if waiver of pre-deposit is not granted to the appellant?"

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. The assessee is engaged in the business of manufacturing of M.S. flats below three mm. in thickness and having width less than 400 mm. (patra). The respondent issued a notice dated August 4, 2011 (annexure A-1) to the assessee to show cause as to why excise duty amounting to Rs. 81,29,235 along with interest and penalty be not recovered from them for wrongly claiming burning loss to the tune of five per cent, instead of one to two per cent, for the periods from 2007-08 to 2010-11 (up to October, 2011). The said show-cause notice was duly replied by the assessee. The adjudicating authority vide order dated August 30, 2012 (annexure A-2) confirmed the demand and interest and also imposed penalty of an equal amount. Feeling aggrieved, the assessee filed an appeal along with stay application before the Tribunal. The Tribunal vide order dated March 18, 2013 (annexure A-3) directed the assessee to deposit 25 per cent, of the duty component alone (excluding penalty and interest). Still not satisfied, the assessee approached this court by way of Central Excise Appeal No. 35 of 2013. This court vide order dated April 30, 2013 (annexure A-4) directed that the appeal be not dismissed for non-deposit of the pre-deposit amount. However, the appeal was allowed by this court vide order dated November 21, 2013 (annexure A-5) and the matter was remitted to the Tribunal to consider the application for pre-deposit afresh after taking into consideration the opinion recorded by the Commissioner (Appeals), Customs and Central Excise in the case of M/s. Jai Sidh Yogi Steel Rolling Mills, Bhadla Road, Village Alour, Khanna in accordance with law. In pursuance thereof, the Tribunal vide impugned order dated April 30, 2014 directed the appellant to deposit 15 per cent, of the duty demanded. Hence, the present appeal.

3. The learned counsel for the appellant submitted that the Tribunal had directed the assessee to pre-deposit 15 per cent of the duty demanded as a condition precedent for hearing of the appeal which was unreasonable and unjustified. The learned counsel further submitted that there was no suppression of clearance at all made by the assessee and the proceedings were initiated merely on the audit objection.

4. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

5. In the present case, the Tribunal has only directed payment of 15 per cent, of the duty demanded and has waived the pre-deposit of balance amount. The Tribunal has considered all the aspects and, prima facie, keeping in view the undue hardship to the appellant, the impugned order has been passed which is just and reasonable.

6. In view of the above, no substantial question of law arises in these appeals. Consequently, finding no merit in the appeals, the same are hereby dismissed. A prayer was made by the learned counsel for the appellant to extend the time for pre-deposit. However, in the interest of justice, we extend the time to deposit the amount as directed by the Tribunal up to August 31, 2014. However, it is directed that if the appellants in the present cases deposit the amount as directed by the Tribunal by August 31, 2014, the appeals shall be heard on the merits in terms of the order dated April 30, 2014 passed by the Tribunal.