

(2014) 12 MAD CK 0329

Madras High Court

Case No: CMA Nos. 3336 and 3337 of 2014 and M.P. No. 1 of 2014

Kannaappan Iron and Steel Co.
Pvt. Ltd.

APPELLANT

Vs

Commissioner of Central Excise
and Service Tax

RESPONDENT

Date of Decision: Dec. 4, 2014

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 11A(2), 11AC, 35F

Citation: (2015) 317 ELT 245

Hon'ble Judges: R. Sudhakar, J; R. Karuppiyah, J

Bench: Division Bench

Judgement

R. Sudhakar, J.

Mr. T. Chandrasekaran, learned standing counsel is directed to take notice for the respondent.

2. Aggrieved against the order of the Customs, Excise and Service Tax Appellate Tribunal directing the appellant to deposit a sum of Rs. 90,00,000/- as pre-deposit as condition precedent for hearing the appeal, the appellant is before this Court challenging the said order by filing the present appeal, by raising the following questions of law:-

"1) Whether the order of the Tribunal directing a pre-deposit of Rs. 90,00,000/- of the disputed taxes stands vitiated inasmuch as it fails to see that the condition imposed is such which for all intent and purport takes away the appellant's vested right of appeal and works as a deterrent or disables and impedes access to a forum, viz., CESTAT which is meant for redressal of the grievance of an assessee suffering an adverse order and results in rendering the statutory remedy of appeal illusory?

2) Whether the order of the Tribunal failed to see that a strong prima facie case has been made out by the appellant inasmuch as the valuation is highly inflated and the

demand of duty, even if all the allegations are accepted, would come to Rs. 33,89,034/- as against Rs. 2,83,25,041/-?

3) Whether the order of the Tribunal inasmuch as it has not even considered nor rendered any finding on the existence or otherwise of "undue hardship" while exercising its power to dispense with pre-deposit under Section 35F of the Central Excise Act suffers from non-consideration of relevant aspect/statutory condition stands vitiated?"

3. The respondent assessee, it appears, is engaged in the business of manufacture of MS. Ingots and it sold certain goods to its dealers, who are termed to be related persons. It further appears that those persons, in turn, sold the goods in the market at a much higher price. The Department initiated proceedings stating that the price at which the related persons sold the goods at the open market should be the price that is to be taken for computation of duty liability and, therefore, demanded duty on such transaction together with consequential fine and penalty. The relevant portion of the order of the Commissioner is quoted hereunder for easy reference:-

"i. I confirm the demand of an amount of Rs. 2,83,25,041/- (Rupees Two Crores Eighty Three Lakhs Twenty Five Thousand and Forty One only) (BED: Rs. 275,50,299 + Edn. Cess: Rs. 5,16,311/- + Sec. & Higher Edn. Cess: Rs. 2,58,443/-) on M/s. Kannappan Iron and Steel Company (P) Ltd., Karaikal, towards the differential duty payable by them for the sale of TMT Rods to related persons during the period from October, 2007 to December, 2010 under Section 11A(2) of the Central Excise Act, 1944, as it existed during the relevant period invoking extended period of limitation and order recovery of the same;

ii. I order that M/s. Kannappan Iron and Steel Company (P) Ltd., Karaikal, shall pay interest at appropriate rates under Section 11AB of the Central Excise Act, 1944, as it existed during the relevant period; &

iii. I impose a penalty of Rs. 2,83,25,041/- (Rupees Two Crores Eighty Three Lakhs Twenty Five Thousand and Forty One only) under Section 11AC of Central Excise Act, 1944."

4. Aggrieved against the said order, the appellant challenged the same before the Tribunal. The Tribunal passed a Miscellaneous Order dated 3.7.14 in Misc. Order No. 41083/2014, wherein the Tribunal observed and passed direction as quoted hereunder:-

"3. Prima facie, we find that there is mutuality of interest on the basis of evidence placed by the Revenue that the transaction value of the two dealers is much lower than the transaction value of other buyers and therefore the applicant failed to make out a prima facie case for waiver of pre deposit of entire dues. The learned consultant has not pleaded any financial hardship.

4. In view of that, we direct the applicant to pre deposit a sum of Rs. 90,00,000/- (Rupees Ninety Lakhs only) within a period of eight weeks and report compliance on 10.9.2014. Upon such deposit, pre deposit of the balance dues stands waived and recovery thereof stayed during the pendency of the appeal."

5. As against the said order, modification application was filed by raising additional grounds pleading that even assuming that the sale by the related persons is taken into account, then demand for duty could only be to the extent of an amount of approximately Rs. 33 Lakhs. However, the said application did not find favour of the Tribunal and the Tribunal, by Misc. Order No. 41597/2014 dated 10.9.14 came to the conclusion that new documents are now produced before it and, therefore, that has to be tested on merits. Therefore, the Tribunal went on to hold that it is not inclined to accept the plea for reduction or modification of the amount ordered to be deposited as pre-deposit for hearing the appeal. Further, on the plea of financial hardship as raised by the appellant, the Tribunal was of the view that the balance sheet of the appellant company showed huge profits and there are outstanding trade creditors to the tune of Rs. 2.9 Crores and the receivables amounts to Rs. 3.4 Crores. Though the outstanding loan was Rs. 49.65 Crores, the balance sheet showed a net profit of Rs. 2.76 Crores and, therefore, the Tribunal declined to interfere with the order of stay of pre-deposit of Rs. 90,00,000/- already ordered by it, which is equivalent to about 30% as against the total demand of Rs. 2.83 Crores. Aggrieved against the said order of the Tribunal, the appellant is before this Court by filing the present appeal.

6. Heard Mr. Magesh, learned counsel appearing for the appellant and Mr. Chandrasekaran, learned standing counsel appearing for the respondent.

7. The point in issue is whether there is a prima facie case for interference with the order of the Tribunal on merits and also a case for reduction of pre-deposit on the ground of financial hardship.

8. On a careful scrutiny of the documents placed before us as also a perusal of the order of the Tribunal, this Court finds that both the grounds as pleaded by the appellant are totally lacking in the present appeal. On the first ground, this Court is of the opinion that the new plea taken before the Tribunal, as rightly held by the Tribunal, has to be tested, since the same was not before the assessing authority, viz., the Commissioner. In the above backdrop, reduction in pre-deposit, as sought for by the appellant, cannot be justified on prima facie case.

9. On the plea of financial hardship, this Court finds that the order of the Tribunal clearly shows that there is a net profit of Rs. 2.75 Crores, outstanding of Rs. 2.9 Crores and receivables to the tune of Rs. 3.4 Crores and, therefore, there is no justification for the appellant to plead financial hardship. This Court is in full agreement with the view expressed by the Tribunal on the plea of financial hardship.

10. There being no merits in the appeals, this Court finds no reason to interfere with the order passed by the Tribunal. This Court is of the considered view that no questions of law, much less substantial questions of law arise for consideration in this appeal.

11. For the reasons aforesaid, these appeals fail and the same are dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

12. Learned counsel for the appellant pleaded that this Court may grant four weeks' time to the appellant to deposit the pre-deposit amount as ordered by the Tribunal. Though this Court is inclined to accept the request of the counsel to grant time, however, is not inclined to grant the time as sought for by the counsel for the appellant. The appellant is granted time only till 18.12.2014 for depositing the amount as ordered by the Tribunal.