

(2014) 01 CAL CK 0097

Calcutta High Court

Case No: G.A. No. 2936 of 2013 and CEXA No. 22 of 2013, C.A.N. No. 10329 of 2013, M.A.T. No. 1555 of 2013 and W.P. No. 19685 (W) of 2013

Ess Dee Aluminium Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Jan. 31, 2014

Citation: (2014) 307 ELT 671

Hon'ble Judges: Tapash Mookherjee, J; G.C. Gupta, J

Bench: Division Bench

Advocate: Arijit Chakraborty, Satyaprem Majumder and R. Bharadwaj, Advocate for the Appellant

Judgement

@JUDGMENTTAG-ORDER

1. The order dated 9th January, 2014 passed in ITAT No. 147 of 2013, G.A. No. 2590 of 2013 (Commissioner of Income Tax, Kolkata-II v. UCO Bank) along with C.A.N. No. 10329 of 2013, M.A.T. No. 1555 of 2013, W.P. No. 19685 (W) of 2013, which was, in fact, intended to be passed in the above matter is today passed as follows: By an order dated 30th April, 2013 passed in Appeal No. Ex. Ap. 49/2011, the learned Tribunal directed the appellant before us to make a pre-deposit of 25% of the CENVAT Credit involved in the case within a period of eight weeks and report compliance on 15th July, 2013. Aggrieved by the order dated 30th April, 2013, the appellant presented a writ petition before this Court which was registered as W.P. No. 19685 (W) of 2013. By an order dated 11th July, 2013 passed in the aforesaid writ petition, the order passed by the learned Tribunal was varied and/or modified as follows:

"Accordingly, the order impugned in this writ petition is modified to the extent that instead of deposit of 25% of the CENVAT Credit as directed, the petitioner shall furnish a Bank Guarantee issued by any Nationalized Bank covering the duty demanded within fortnight from date. The petitioner shall go on renewing the said

Bank Guarantee until disposal of the appeal or until the order that may be passed by the Tribunal in the pending appeal. There shall be an unconditional stay of the said order for a period of fortnight from date.

If the petitioner fails to furnish the Bank Guarantee within the period stipulated hereinabove, the order impugned in this writ petition shall automatically stand revived and the authorities shall be at liberty to take all appropriate steps in accordance with law."

2. The appellant, however, failed to furnish the Bank Guarantee within the time stipulated by the order dated 11th July, 2013, to be precise, the time for furnishing the Bank Guarantee expired on 26 July, 2013.

3. We are told that an application for extension of time to furnish the Bank Guarantee was made on 1st August, 2013. During the pendency of that application, the appeal came up before the Tribunal and was dismissed by an order dated 19th August, 2013. After the appeal was dismissed by the Tribunal, the application for extension of time to furnish the Bank Guarantee was dismissed by an order dated 29th August, 2013 on the ground that there was no longer any requirement to furnish any Bank Guarantee because the appeal itself had been dismissed.

4. Aggrieved by the order dated 29th August, 2013 dismissing the application for extension of time to furnish the Bank Guarantee as also aggrieved by the order dated 19th August, 2013 passed by the Tribunal dismissing the appeal, two separate appeals have been preferred. Both the appeals have been taken up together and are disposed of by the following orders:

5. In the event, a sum of Rs. 1 crore is deposited by the appellant with the Commissioner within a month from date, the Appeal No. Ex. Ap. 49/11 shall stand revived and shall be heard by the Tribunal on merit.

6. In the event, such deposit is not made, both the appeals shall stand dismissed

7. Both the appeals are, thus, disposed of. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.