Amarnath Banerjee Vs. Commission of Central Excise, Kol

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SooperKanoon Citation : sooperkanoon.com/1059213

Court : Kolkata

Decided On : May-07-2012

Judge : Sanjib Banerjee

Appellant : Amarnath Banerjee

Respondent : Commission of Central Excise, Kol

Judgement :

WP No.525 of 2011 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE AMARNATH BANERJEE -Versus COMMISSION OF CENTRAL EXCISE, KOLIII Appearance: Mr.J.P.Khaitan, Sr.Adv...for the petitioner.

Mr.R.Bharadwaj, Adv...for the respondents.

BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date : May 7, 2012.

The Court : The writ petitioner assails an order passed by the tribunal under Section 35-F of the Central Excise Act, 1944 in not dispensing with the statutory pre-deposit for an appeal being heard out.

principal The grievance of the petitioner is that the ground urged on the merits of the appeal was not considered even on prima facie basis by the tribunal despite the tribunal recording the argument in such regard made by the petitioner.

The petitioner appears to be a manufacturer of plastic bags.

Following authorities, it an was enquiry discovered or investigation that manufactured by the plastic excise bags, which were subject to excise duty, had left the manufacturing facility without any excise invoice being drawn therefor.

The case run by the petitioner before the authorities is that the goods were made over to a broker on challans but the broker would not part with the goods without due invoices including the excise component, being raised by the petitioner on the buyeRs.The commissioner found that the petitioner was liable to excise duty of about Rs.96 lakh and an equivalent amount by way of penalty.

The petitioner has preferred an appeal and prior to the hearing thereof, the petitioner applied invoking the fiRs.proviso to Section 35-F of the Act.

The petitioner says the prima facie case made out by an appellant, the financial hardship that the order under appeal is likely to cause to an appellant and the interest of the revenue are the three factors which ought to be taken into consideration in deciding an application under the fiRs.proviso to the section.

The respondents do not immediately question such legal position.

The petitioner says that since the commissioner took into account a report that was obtained after the petitioner had a chance to address the commissioner and after the hearing afforded to the petitioner had been concluded, the order of the commissioner was vitiated by the violation of the principles of natural justice.

The petitioner says that such ground was clearly urged before the tribunal and is noticed at paragraph 4 of the order impugned.

The petitioner says that in considering the merits of the appeal on a prima facie basis, the tribunal failed to take into account such aspect of the matter as is evident from paragraph 6 of the order.

Since the point of natural justice that has been raised does not appear to be altogether baseless upon a reading of the commissioners order, it is necessary that such aspect of the petitioners grievance on merits be taken into account by the appellate tribunal to consider whether undue hardship would be occasioned to the petitioner in the petitioner being required to make the pre-deposit of Rs.45 lakh.

Though the tribunal scaled down the quantum of deposit that the petitioner was required to make, the full complement of the possible prima facie view is not reflected in the order impugned.

The order dated March 31, 2012 passed by the tribunal is set aside and the tribunal is requested to reconsider the matter and pass a fresh order within four weeks from the date of deposit of an authenticated copy of this order.

W.P.No.525 of 2011 is disposed of on the above basis.

There will be no order as to costs.

Urgent certified photocopies of this order, if applied for, be given to the parties subject to compliance with requisite formalities.

(Sanjib Banerjee, J.) A/s.

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