Devinder Narang Vs. Commissioner of Customs and Another

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Court : Punjab and Haryana

Decided On : May-29-2013

Appellant : Devinder Narang

Respondent : Commissioner of Customs and Another

Judgement :

CUSAP No.1 of 2013 (O&M) -1- IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH 1

CUSAP No.1 of 2013 (O&M) Devinder Narang ....Appellant Versus Commissioner of Customs and another ....Respondents 2.

CUSAP No.1 of 2013 (O&M) M/s Simran Bright Bar Industries ....Appellant Versus Commissioner of Customs and another ....Respondents Date of decision:

29. 05.2013 CORAM: HON'BLE Mr.JUSTICE SURYA KANT HON'BLE Mr.JUSTICE R.P.NAGRATH PRESENT: Mr.Rajesh Garg, Advocate for the appellant.

SURYA KANT, J.

(ORAL) CM No.4226-CII of 2013 in CUSAP No.1 of 2013 For the reasons mentioned in the application, the same is allowed and delay of 196 days in filing the accompanying appeal is condoned.

C.M.stands disposed of.

CUSAP No.1 of 2013 (O&M) -2- CUSAP Nos.1 and 2 of 2013 (O&M) This order shall dispose of two appeals bearing CUSAP Nos.1 and 2 of 2013 as similar questions of law and facts are involved in the same.

For brevity, the facts are being extracted from CUSAP No.1.

This Custom Appeal is directed against the order dated 17.1.2012 (Annexure A-1).passed by the CustoMs.Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal).dismissing the appellant's application to modify its previous order dated 3.6.2011 (Annexure A-2).Vide order dated 3.6.2011, the appellant was directed to deposit ` 50 lacs as a pre-condition for the hearing of his appeal, in terms of Section 35-F of the Central Excise Act, 1944 (for short 'the Act').out of the penalty of ` 3,50,00,000/- which is under challenge in the appeal.

The Tribunal has observed that the appellant deliberately participated in the fraud of exporting firMs.by facilitating the issue of invoices, on commission basis, without the actual issuance of goods.

The Tribunal has, however, found that prima facie the appeal preferred by the appellant requires consideration and on consideration of the total amount of penalty, the Tribunal has directed the appellant to deposit ` 50 lacs as a pre-condition in terms of Section 35-F of the Act for the hearing of his appeal.

In the light of principles laid down by Hon'ble Supreme Court in Benera Valves LTD.versus Commissioner of Central Excise, (2006) 13, SCC 34.and Indu Nissan Oxo Chemicals Ind.

Ltd versus Union of India (UOI) and otheRs.(2007) 13 SCC 487.to draw balance CUSAP No.1 of 2013 (O&M) -3- between 'undue hardship' viz.a.viz.

the 'interest of the revenue', we are satisfied that the pre-condition of deposit of ` 50 lacs, calls for no interference by this Court.

For the reasons afore-stated, both the appeals stand dismissed.

(SURYA KANT) JUDGE May 29, 2013 (R.P.NAGRATH) rishu JUDGE