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Telco Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-05-2002

Reported in : (2003)(153)ELT145Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Telco Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The Commissioner of Central Excise Jamshedpur vide the Order-in-Original No. 56/Commr./2001, dt. 31-10-2001 had confirmed the demand of Rs. 1,54,43,68,025/- against M/s. TELCO Ltd. and had imposed penalty of equal amount on M/s. TELCO Ltd. He had also imposed penalties upon 4 officers of the assessee. Five appeals were filed against this order and applications for waiver of pre-deposit of the duty confirmed and the penalties imposed. These applications were disposed of vide Order No. C-I/2474-79/WZB/2002, dt. 22-8-2002. The Tribunal after considering all the submissions made and the complex issues involved directed M/s. TELCO to deposit a sum of Rs. 50 crores as a precondition to hearing of their appeal. The waiver was granted to the officers unconditionally. M/s. TELCO have filed the present application for modification of the stay order.

2. In the application and in the arguments by Shri V. Sridharan a number of points urged at the time of arguments on the stay application have been reiterated. Submissions have made to the effect that the CEGAT order on the stay

applications does not take into account some points urged before it. A statement is also made that the portion of 45 crores of the demand is on addition of after sale service to the assessable value, which stood issue settled by the Tribunal in their own case. It is claimed that on correct calculation the demand for Rs. 108.47 crores was quantifiable at Rs. 41.42 crores only.

3. The claim was also made that the company is passing through acute financial hardship. Balance sheet for the year ending 31-3-2002 was placed on record.

4. Shri K.M. Mondal advanced arguments on the various technical issue raised in the modification application. He maintained that since the cash profit was of over Rs. 340 crores, there was no difficulty in payment.

6. In the proceedings under Section 35F of the Central Excise Act, the Tribunal assesses prima facie merits in determining the quantum of pre-deposit. The Tribunal is not expected to go into each point urged during making their prima facie opinion. The Karnataka High Court in their judgment in the case of Wipro Infotech Ltd. v. CEGAT [1995 (75) E.L.T. 266] had declined to interfere with a interim order made by the Tribunal in similar circumstances holding that at the stage of considering the grant of interim relief, the Tribunal was not under an obligation to return a specific finding on every issue urged. We are therefore not inclined to go into the arguments made on the paucity of discussion of certain points urged before us during the hearing on the stay application.

7. The plea of financial hardship is urged with supporting documentation. The submission was made peripherally and in passing, in the stay application, nothing was placed on record to substantiate the plea of hardship. Therefore the orders on the stay application also had not taken cognizance of that submission. At this stage before us however it is very strongly urged. Shri V. Sridharan relies upon Madras High Court decision in the case of Collector of Central Excise v.Coronation Litho Works [1994 (69) E.L.T. 238 (Mad.)] and Shri Mondal refers to the Wipro Infotech Ltd. judgment (Supra).

8. We have considered the submissions, have seen the case law as also balance sheet and the final accounts. The gross profit was Rs. 763.35 crores, which after

provisions for all contingencies including the depreciation and the interest has been converted into a loss of Rs. 109.21 crores before tax and Rs. 53.73 crores after tax. The judgment cited by Shri V. Sridharan establishes a ratio between the profits made and deposit directed to be made under Section 35F of the Act. However Shri Mondal refers to the existence of the cash and bank balance of Rs. 326 crores. In this situation although we feel that some benefit is warranted to the applicants, it would be not to the extent of complete waiver.

9. In modification of our earlier order we direct to M/s. TELCO Ltd. to deposit Rs. 20 crores (Rupees Twenty Crores) in cash and also to file bank guarantee for Rs. 30 crores (Rupees Thirty Crores) within 8 weeks of the receipt of this order. On the compliance being made there shall be waiver of pre-deposit of the remaining sums and stay of recovery thereof during the pendency of the appeal.

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