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Dhar Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-04-2005

Judge : R Abichandani, M T K.C.

Appellant : Dhar Industries

Respondent : Cce

Judgement :

1. By these applications, the applicants referring to the Order dated 10.3.2005 made by the Madhya Pradesh High Court prayed for re-considering the appeals and fixing their final hearing. The Tribunal had on 11.9.2003 directed the applicants to deposit Rs. 21,78,016/-by 15.11.2003. The matter was posted on 24.11.2003 for reporting compliance of the conditions on which interim stay was granted. Since the applicants did not comply with the order, all the appeals came to be dismissed for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944 by Order dated 24.11.2003.

2. It appears that thereafter the applicants approached the High Court of Madhya Pradesh. In the paragraph 3 of the Order of the High Court the only contention that was raised before the High court was that since the appellant's unit is declared as sick industrial unit by the BIFR by Order dated 14.3.2002, the applicants cannot be compelled to deposit the duty/penalty, which was the subject matter of the appeal.

It was contended that once the appellant was declared as sick company by the BIFR then the plea of financial hardship was made out in their favour entitling them

to seek waiver of pre-deposit. The High Court observed that the application dated 7.11.2003 made subsequent to the Order dated 11.9.2003 but it was not taken note of by the Tribunal while passing its order dated 24.11.2003. The High Court, holding that the said aspect of the applicants being declared as sick company by the BIFR was not considered by the Tribunal because no one appeared for the applicants on 24.11.2003 and that it was required to be reconsidered on its merits, set aside the order dated 24.11.2003 and directed in paragraph 5 of its judgment that, the "application be decided within a period of three months". The appellant was directed by the High Court to appear before the Tribunal on 21.3.2005. However, according to him, he received copy of the judgement of High Court on 21.3.2005 and, therefore, was not able to appear before this Tribunal on that day.

3. Today, none appears for the applicants, in any of these 3 matters, in which these ROAs are made. The High Court had directed the Tribunal to decide the application and, therefore, prayer sought in the ROA for fixing the regular hearing of the appeals is mis-conceived. It appears that the decision of the Supreme Court in Metal Box (India) Ltd. v.Commissioner of Central Excise, Mumbai rendered on 3rd April, 2003 was not brought to the notice of the Hon'ble High Court. The Supreme Court has, in context of a similar plea, in terms, held that Section 22 of the Sick Industrial Companies (Special Provisions) Act. 1985, provided relief in regard to the proceedings which relate to (a) winding up of the industrial company; (b) execution, distress or the like against any of the properties of the industrial company; (c) the appointment of a receiver in respect thereof, and (d) proceeding in regard to suite for recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advances granted to the industrial company. It was also held that, payment of pre-deposit covered under Section 35F of the said Act, 1944 does not fall in any of these categories in Section 22 of SIC A. Since the issue is clearly covered by the decision of the Apex Court, we have no option to take a different view of the matter pursuant to the directions of the High Court, on this count.

4. Following the ratio of the decision of the Supreme Court in Metal Box India Limited (supra), we reject the contention that pre-deposit should be waived on the ground that the applicant company is declared sick under the provisions of Sick

Industrial Companies (Special Provisions) Act, 1985, All these three applications are, therefore, rejected.

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