Karan Electronics Ltd. Vs. Cegat

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Court : Allahabad

Decided On : Nov-27-1995

Reported in : 1996(81)ELT484(All)

Judge : M.C. Agarwal, J.

Acts : Central Excise Act, 1944 - Sections 35F; ;Central Excise Rules, 1944 - Rule 57F(4); Constitution of India - Article 226

Appeal No. : Civil Misc. Writ Petition No. 1067 of 1995

Appellant : Karan Electronics Ltd.

Respondent : Cegat

Advocate for Def. : Shishir Kumar, Adv.

Advocate for Pet/Ap. : A.P. Mathur, Adv.

Disposition : Petition dismissed

Judgement :

M.C. Agarwal, J.

1. This is a petition under Article 226 of the Constitution of India seeking a writ of certiorari for quashing an order dated 16th October, 1995 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, under the proviso to

Section 35F rejecting the petitioner's application for waiving the conditions of the deposit of the duty levied.

2. I have heard Sri A.P. Mathur, learned Counsel for the petitioner and Sri Shishir Kumar, learned counsel for the respondents who did not desire to file any counter affidavit. The writ petition therefore, was finally heard at the admission stage.

3. The petitioner is engaged in the manufacture of Television sets and is availing the facility of modvat on the inputs mainly consisting of picture tubes. It had availed modvat credit to the tune of Rs. 2,16,349.43 paise during the month of June, 1992. In November, 1992 the Assistant Collector, Central Excise issued a show cause notice to the petitioner why the said credit be not disallowed because the same did not appear to be admissible as he did not produce original documents to the Jurisdictional Superintendent for veryfying their genuineness and defacement as required under Rule 57F(4) of the Central Excise Rules, 1944. The petitioner submitted a reply contending that the original documents had been lost and, therefore, they had produced certified copies of the gate passes and the modvat facility cannot be denied to them. By an order dated 20-4-1993 the Assistant Collector rejected the petitioner's objection. The petitioner filed an appeal to the Collector (Appeals) who dismissed the same vide order dated 28th April, 1995. The petitioner filed a further appeal to the aforesaid Tribunal which is pending.

4. Under Section 35F of the Central Excises and Salt Act the person desirous of appealing is required to deposit with the adjudicating authority the duty demanded or the penalty levied. The proviso to Section 35F however, authorises the appellate authority to dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue where the appellate authority is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person. Under the said proviso the petitioner moved an application to the Tribunal praying that the condition of deposit of duty be dispensed with and by the impugned order the Tribunal has rejected the same.

5. Learned Counsel for the petitioner contended that the loss of original gate passes does not disentitle a manufacturer from claiming the Modvat Credit and Trade Notice Number 83-CE(45 MISC)/85, dated 19-12-1986. It is provided that when the original gate passes have been lost in transit, the manufacturer working under MODVAT should be asked to produce a copy of the gate pass duly certified by the Range Superintendent-in-charge of the factory and that this has already been done by the petitioner and that financial condition of the petitioner is such that the requirement of deposit would cause undue hardship to the petitioner. Admittedly, the petitioner had not produced the original documents required under the rules. The orders of the Assistant Collector and the Collector show that what was produced were photo copies of the gate passes and not the copy of the gate passes duly certified by the Range Superintendent-in-charge of the factory. As regards, the financial position of the petitioner, I find that the petitioner did not place any material before the Tribunal to show that the requirement of deposit of Rs. 2,16,349.43 paise would cause undue hardship to the petitioner. A vague allegation was made in the petition that the petitioners are operating in the small scale sector with limited financial resources and are unable to bear any undue liability. In my view therefore, the Tribunal cannot be said to have exercised its discretion arbitrarily and no ground is made out for interference by this Court in the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is accordingly, dismissed with costs.