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Sameer Ispat Vs. Cestat

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Court : Allahabad

Decided On : Dec-08-2005

Reported in : 2006(194)ELT26(All)

Judge : A.K. Yog and ;Prakash Krishna, JJ.

Acts : Central Excise Act, 1944 - Sections 35F; Constitution of India - Article 226

Appeal No. : Civil Misc. Writ Petition No. 1615 of 2005

Appellant : Sameer Ispat

Respondent : Cestat

Advocate for Def. : Aradhana Chauhan, Adv.

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

Judgement :
ORDER

1. Heard Shri A.P. Mathur, learned Counsel for the petitioners and Ms. Aradhana Chauhan, learned Counsel for the Department.

2. The present writ petition has been filed against the order dated 5th October 2005 issued on 20th October 2005 by the Customs Excise and Service Tax Appellate Tribunal, New Delhi by which the Tribunal partly allowed the Waiver Application filed by the petitioner, not full waiver of the precondition of deposit of

demand for the entertainment of appeal. The Tribunal by the impugned order has directed the petitioner to deposit a sum of Rs. 15 lakhs as against the out standing dues amounting to Rs. 56,06,662.00 besides the penalty.

3. Learned counsel for the petitioner within his vehemence at his command submitted that Tribunal committed illegality in not to granting full waiver. He submitted that the petitioner's unit is lying closed since 1997. The demand was raised and the duty was levied on the basis of certain documents recovered at the Dharamkanta. Those documents have no bearing to the production activities of the petitioner's unit. He further submitted that proper opportunity of hearing was not afforded by the Commissioner of Central Excise while deciding adjudication proceedings.

4. In contra, learned Standing Counsel points out that the impugned order is discretionary one and Court should not interfere in exercise of its jurisdiction under Article 226, Constitution of India. She further submitted that Tribunal has taken into account relevant factors such as financial hardship while passing the impugned order.

5. We have given our careful consideration on the respective submission of learned counsel for the parties. Learned Counsel for the petitioner has placed reliance upon the decision of the Division Bench of this Court in case of M.C. Goel v. Union of India and Ors. : 1988(35)ELT449(All) . Emphasis was laid on para 6 of the said judgment.

The said para reproduced below :

The object underlying the proviso would, in our opinion, be really served where, on finding that the requirement to deposit the entire amount of the Duty demanded or penalty levied would cause 'undue hardship' to the appellant, the appellate authority takes a realistic view of the matter in determining the conditions which should be imposed upon the person for dispensing with the requirement of the deposit. On the facts of the present case, we have found that the petitioner's banker had agreed to give a Bank guarantee only on the condition that the entire amount is deposited in cash by the petitioner with it. We have also found from the

copy of the balance-sheet, which the petitioner has appended with the first of the two writ petitions, that the entire assets of the petitioner firm is a little over Rs. 3 lakhs, while the case in hands is only amount Rs. 1000/- and odd. It is obvious that in this state of petitioner's financial condition, requiring the petitioner to furnish Bank guarantee for Rs. 4,50,000/- which, according to the communication of the Bank, could only be issued by it subject to deposit of the entire amount by the petitioner, coupled with the fact that during the previous three years, immediately preceding the year in question, the petitioner firm had been incurring losses, the requirement to furnish Bank guarantee for Rs. 4,50,000/- as directed by the Tribunal, would result in wiping out the entire business of the petitioner. Such a result could not be intended by the Statute. However, without saying anything further, we feel that the matter should be looked into again by the Tribunal in the light of the circumstances which may be placed before it on behalf of the petitioner in a proper application, supported by necessary documents, which may be moved by the petitioner and suitable orders be passed by the Tribunal at an early date.

He further submitted that the plea of the petitioner that the demand was time barred was not considered by the Tribunal while passing the impugned order. Reliance has been placed by him in the case of Luxco Electronics v. Union of India and Ors. : 1987(31)ELT883(All) .

6. Having considered the respective submissions of the learned counsel for the parties, we find that the petitioner has been asked to deposit only a sum of Rs. 15 lakhs out of demand of Rs. 56,06,662.00 besides penalty of Rs. 10 lakhs and personal penalty of Rs. 1 lakhs.

7. Proviso to Section 35F of the Central Excise Act, 1944 provides that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Tribunal, may 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 and emphasis appears on the words 'safeguard the interests of revenue'.

8. Looking to the fact that the petitioner Unit lying closed since 1997, we substitute the order of the Tribunal and the direct the petitioner to deposit a sum of Rs. 5 lacs

(Rupees Five Lacs only) within one month from today and furnish the indemnity bond for the entire disputed amount within aforesaid period to the satisfaction of the authority concerned. If the petitioner fails to comply with either of the condition, the appeal filed by it before the Tribunal shall not be entertained. It is made clear that if petitioner fulfils the conditions of this order, the Tribunal shall hear and decide the appeal on merits. The appeal may be disposed of preferably within three months after the deposit.

9. Writ petition is disposed of finally.

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