Eon Polymers Ltd. Vs. Commissioner of Central Excise-i

Eon Polymers Ltd. Vs. Commissioner of Central Excise-i

SooperKanoon Citation : sooperkanoon.com/703223

Court : Delhi

Decided On : Jul-24-2008

Reported in : 2009(234)ELT424(Del)

Judge : Badar Durrez Ahmed and; Rajiv Shakdher, JJ.

Appeal No. : Writ Petition (Civil) No. 15035/ 2006

Appellant : Eon Polymers Ltd.

Respondent : Commissioner of Central Excise-i

Advocate for Def. : Saroj Bidawat, Adv.

Advocate for Pet/Ap. : Rattan K. Singh, Adv

Judgement :

Badar Durrez ahmed, J.

1. In this writ petition, the only question raised is with regard to the waiver of the pre-deposit of the duty/penalty which has been imposed upon the petitioner.

2. Earlier, by an adjudication order dated 12.05.2000, duty and penalty aggregating to approximately Rs. 5.00 crores were imposed on the petitioner. There was also a direction for confiscation of the plant and machinery and other goods lying in the factory premises. Being aggrieved, the petitioner preferred an

appeal before the Customs, Excise and Service Tax Appellate Tribunal and also moved an application for waiver of pre-deposit. By an order dated 01.11.2000, the tribunal required the petitioner to deposit an amount of Rs. 15.00 lac and waived deposits in respect of the balance amount for hearing of the appeal.

3. The petitioner company was facing acute financial hardships and therefore, it made an application for modification of this order. The same was allowed by virtue of the order dated 04.01.2001 to the extent that the pre- deposit amount was reduced to an amount of Rs. 1.50 lacs. The petitioner deposited the said amount of Rs. 1.50 lacs and the appeal was heard by the tribunal. On hearing appeal, the tribunal set aside the original adjudication order and remanded the matter to the Commissioner Central Excise. Since, the plant and machinery had been confiscated, the same were also directed to be released to the petitioner. The Commissioner passed the adjudication order dated 15.07.2003 and imposed an aggregate duty and penalty of Rs. 1.41 crores as against the initial order of adjudication whereby the said aggregate amount of approximately Rs. 5.00 crores was imposed.

4. Being aggrieved by the said adjudication order, the petitioner preferred an appeal before the tribunal and also moved an application for waiver of pre-deposit. This time, however, the tribunal by an order dated 09.01.2004 waived the pre-deposit condition in view of the Rs. 1.50 lacs already deposited by the petitioner in the previous round. The tribunal heard the appeal and set aside the order dated 15.07.2003 and remanded the matter for adjudication before the Commissioner once again. Thereafter, by an order dated 08.80.2005, the Commissioner passed a fresh adjudication order imposing penalty/duty amounting to approximately Rs. 64.00 lacs and also ordered confiscation of goods etc.

5. For the third time, the petitioner filed an appeal before the tribunal and once again sought waiver of pre-deposit. This time, however, the appellate tribunal dismissed the petitioner's application for waiver of pre- deposit and directed the petitioner to deposit the entire amount of Rs. 64.00 lacs. The petitioner has, thereafter, as indicated in the petition, been running from pillar to post to raise the amount of Rs. 64.00 lacs, so that its appeal could be heard by the tribunal. It was

not able to raise the funds for the said deposit and, being left with no other alternative, it has approached this Court by way of this petition.

6. After considering the circumstances of this case and hearing learned Counsel for the parties, we are of the view that the petitioner's appeal before the tribunal ought to be heard on the basis of the deposit of Rs. 1.50 lacs already made by the petitioner, as indicated above. This is so because we are satisfied that the petitioner is undergoing genuine financial hardship. We also note that when the duty/penalty was about Rs. 5.00 crores in the first round, the tribunal heard the appeal requiring the petitioner to make a deposit of only Rs. 1.50 lacs. The petitioner's appeals in the first and second rounds have succeeded and in the three successive adjudication orders the aggregate duty / penalty amount has dropped radically from Rs. 5.00 crores to Rs. 1.41 crores and now to Rs. 64.00 lacs.

7. We also direct that since the appeal has been pending for a considerable time before the tribunal, it may be expedited and decided preferably within a period of four months.

8. The writ petition is disposed of accordingly.