Bhima Ssk Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-04-2012

Judge : The Honourable Mr. Ashok Jindal, Member (Judicial) &Amp; the Honourable Mr. P.R. Chandrasekharan, Member (Technical)

Appeal No. : APPLICATION NO: ST/Stay-996/2012 APPEAL NO: ST/287/2012 [Arising out of Order-in-Appeal No: P

Appellant : Bhima Ssk Ltd.

Respondent : Commissioner of Central Excise

Advocate for Pet/Ap. : For the Appellant : Shri Vidyadhar Apte, Advocate. For the Respondent : Ms. D.M. Durando, Dy. Commissioner (AR).

Judgement :

Ashok Jindal:

The appellant are in appeal along with a stay application against the impugned order wherein their appeal has been disposed of for non-compliance with the provisions of Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

2. After hearing the learned counsel, we find that the appeal itself can be disposed of at this stage. Therefore, we have taken up the stay application as well as the appeal together for disposal.

3. The facts of the case are that the Commissioner (Appeals) has asked the appellant to make a pre-deposit of 50% of the service tax demanded along with interest. Against the said order, the appellant filed a writ petition before the Hon'ble High Court of Bombay and during the pendency of the writ petition, the matter came up before the Commissioner (Appeals) and the Commissioner (Appeals) disposed of their appeal on the premise that the appellant failed to comply with the provisions of Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. He also observed that the impugned order is without prejudice to any matter pending before any court and subject to the outcome of the decision of the Hon'ble High Court. Against the said order, the appellant is before us.

4. The learned counsel for the appellant submits that on 19//04/2012 the Hon'ble High Court of Bombay has disposed of their writ petition with a direction to make a pre-deposit of 30% of service tax, which they have complied with. Therefore, the matter be remanded back to the Commissioner (Appeals) to pass an order on merits.

5. We have considered the submissions made by the learned counsel and gone through the impugned order wherein the appeal has been dismissed for non-compliance with the provisions of Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. The Hon'ble High Court of Bombay has directed the appellant to make a pre-deposit of 30% of service tax demanded, which they have complied with, and compliance has been reported before us also. In view of this, we are of the view that the matter should go back to the Commissioner (Appeals) to consider the matter on merits and thereafter pass appropriate order in accordance with law. Accordingly, after waiving the requirement of pre-deposit we remand the matter back to the Commissioner (Appeals) to pass an order on merits without insisting on any pre-deposit.

6. The appeal as well as the stay application are disposed of in the above terms.