(2015) 07 JH CK 0029

In the Jharkhand High Court

Case No : W.P. (T) No. 786 of 2015

Adhunik Power Transmission Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35, 35F
Finance Act, 1994 — Section 83

Citation : (2015) 325 ELT 865 : (2015) 40 STR 1068

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Sumeet Gadodia, Advocate, for the Appellant; Ratnesh Kumar, Advocate, for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—This writ petition has been preferred challenging the ex parte order passed by the Commissioner (Appeals), Central Excise & Service Tax, Ranchi, whereby, stay application has been decided ex parte and there was an order to deposit whole amount within a period of one month and as the pre-deposit was not complied with, an appeal preferred by the petitioner before the Commissioner (Appeals) has also been dismissed. As ex parte order was passed for pre-deposit and there was non-compliance of the said order, therefore, present writ petition has been preferred with a prayer that the stay application may be revived and let the Commissioner (Appeals) be directed to hear the petitioner or to its representative and decide the stay application as well as the appeal preferred by the petitioner. Having heard learned counsels for both the sides and looking to the counter affidavit filed by the respondents and also looking to the communication at Annexure-A to the counter affidavit dated 11th March, 2015 by the Superintendent (Appeals), Central Excise & Service Tax, Ranchi, it appears that the Stay-Order No. 07/JSR/2011, dated 5th January, 2012 [as stated at Annexure-A to the counter affidavit which is a communication by the Superintendent (Appeals), Central Excise & Service Tax, Ranchi] and Stay Order No. 07/JSR/2011, dated 5th December, 2011 [as stated in the order passed by the Commissioner (Appeals), Central Excise & Service Tax, Ranchi] was passed without giving any opportunity of being heard to the petitioner. The stay application was decided ex parte and there was direction to make the payment of amount within a period of one month.

2. As this amount was not deposited, an appeal preferred by the petitioner under Section 35 of the Central Excise Act has also been dismissed. This is the communication which is annexed at Annexure-3 to the memo of this writ petition.

3. Thus, it appears that the Commissioner (Appeals) should not have decided ex parte stay application. Moreover, the order passed in the stay application has also not yet been served upon the petitioner nor it is annexed with the counter affidavit. As there is violation of principles of natural justice in deciding the stay application which is for waiver of the deposition of the amount, we hereby revive the appeal as well as the stay application preferred by the petitioner against the Order-In-Original No. 13/S-Tax/Addl./Commr./2011, dated 22nd June, 2011. We, hereby, quash and set aside the Order-In-Appeal No. 177/JSR/2012, dated 4th September, 2012 as well as the order passed in stay application being Stay-Order No. 07/JSR/2011, dated 5th January, 2012 [as stated at Annexure-A to the counter affidavit which is a communication by the Superintendent (Appeals), Central Excise & Service Tax, Ranchi] and Stay-Order No. 07/JSR/2011, dated 5th December, 2011 [as stated in the order passed by the Commissioner (Appeals), Central Excise & Service Tax, Ranchi] passed under Section 35F of the Central Excise Act, 1944 to be read with Section 83 of the Finance Act, 1994. The Commissioner (Appeals) will decide the stay application afresh after giving an adequate opportunity of being heard to the petitioner or to its representative. The petitioner shall remain present before the Commissioner (Appeals), Central Excise & Service Tax, Ranchi on 11th August, 2015 between 11:00 a.m. and 12:00 noon and, thereafter, the Commissioner (Appeals) may give his suitable date and time for the hearing or he may decide the stay application on the very same day. Accordingly, this writ petition is, hereby, allowed and disposed of.