(2012) 07 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 1528 of 2012 (O and M)

Aggarwal Steel Rolling Mills and Metal Industries	APPELLANT
Vs	
Customs, Excise and Service Tax Appellate Tribunal and Others	RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 18 GSTR 206

Hon'ble Judges : Gurmeet Singh Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Jatinder Jit Kaur, for the Appellant; D.D. Sharma, Senior Standing Counsel, for the Respondent

Judgement

Ajay Kumar Mittal J.—The petitioner in this petition filed under article 226 /227 of the Constitution of India is seeking writ of mandamus to be issued to the respondents to accept the security in the form of immovable property instead of cash as a condition for hearing the appeal on merits. A few facts relevant for the decision of this case, as narrated in the petition may be noticed. The petitioner-firm is a partnership concern having Central excise registration for the manufacture of CTD rounds/bars. During the process of manufacture of such goods from steel ingots, some waste material emerges which is accounted as melting scrap falling under Heading 720490 of the Tariff and sold to furnace units for melting it to manufacture steel ingots. It was noticed by the Department that during the period 2004-05, the petitioner was declaring substantial portion of its production of these goods as defective and showing its sale to furnace units and thus taking credit of the duty paid in the goods so shown in the invoices. A show-cause notice was issued on July 7, 2009 to the petitioner. The petitioner submitted reply to the notice. Vide the order dated July 26, 2010, penalty of Rs. 64,85,299 was imposed upon the petitioner by respondent No. 2 under rule 25 of the Central Excise Rules, 2002 read with rule 13 of the Cenvat Credit Rules, 2002 and rule 15 of the Cenvat Credit Rules, 2004. Aggrieved by the order, the petitioner filed an appeal before respondent No. 1 along with application for waiver of pre-deposit of the penalty amount but the petitioner was directed to deposit 50 percent of the penalty amount vide the order dated May 27, 2011. The petitioner challenged this order before this court by way of C. W. P. No. 16379 of 2011. This court vide the order dated September 16, 2011, annexure P. 1 gave liberty to the petitioner to deposit the amount of penalty as directed by the Tribunal within a period of three months. Aggrieved by the order, the petitioner filed SLP in the hon''ble Supreme Court of India. Vide the order dated December 12, 2011, annexure P. 2, the petitioner was further granted one month''s time to comply with the order passed by this court. Thereafter, the petitioner approached the Tribunal by filing an application to the effect that an amount of Rs. 6 lakhs was deposited but since it was facing financial hardship, it was unable to deposit the rest of the amount. The petitioner prayed that it was ready to furnish security in the form of immovable property. That application has still not been decided. Hence this petition before this court.

2. Learned counsel for the petitioner submitted that due to hardship, the petitioner was unable to adhere to the time schedule for depositing 50 per cent, of the penalty amount, i.e., Rs. 32 lakhs approximately. It was, however, stated that in terms of the order of the Tribunal requiring the petitioner to deposit 50 percent, of the penalty amount for hearing the appeal, the entire amount has since been deposited, though in installments. According to the counsel, the details of the amount deposited is as under:

(i) Rs. 6 lakhs deposited on September 7, 2011, vide the receipt annexure P. 3.

(ii) Rs. 10 lakhs, vide the demand draft dated May 12, 2012.

(iii) Rs. 16 lakhs, vide the demand draft dated July 16, 2012. Total: Rs. 32 lakhs.

A prayer was, thus, made for condoning the delay in depositing the amount and hearing the appeal on merits by the Tribunal.

3. The factum of deposit of Rs. 32 lakhs by the petitioner has not been disputed by the counsel for respondents Nos. 2 and 3.

4. In view of the above, in the facts and circumstances of the case, the delay in deposit of the amount is condoned and the Tribunal is directed to hear the appeal on merits in accordance with law. It is clarified that in case, the Tribunal has passed an order dismissing the appeal for non-compliance of its order for pre-deposit, the same shall stand set aside and would not come in the way of the Tribunal for hearing the appeal on merits in accordance with law. As a sequel to the aforesaid, since the Tribunal has allowed the petitioner to deposit 50 percent of the penalty amount, therefore, the recovery of balance amount shall not be effected during the pendency of appeal before the Tribunal and the attachment made by the Department shall also cease to operate till the appeal is decided by the Tribunal. However, the petitioner is restrained from alienating the attached property till the decision of the appeal by the Tribunal. The writ petition is

accordingly disposed of.