(2010) 01 KAR CK 0087

In the Karnataka High Court

Case No : Writ Petition No. 37193 of 2009

Ambassy Contractors Pvt. Ltd. APPELLANT

Vs

Commr. of C. Ex. RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:
Central Excise Act, 1944 — Section 35 F

Citation : (2010) 256 ELT 349

Hon'ble Judges : V. Gopala Gowda, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : Rukmani Menon, for the Appellant; N.R. Bhaskar, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The petitioner in this petition has questioned the order dated 16-11-2009 passed by the Customs Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT'' South Zonal Bench at Bangalore dismissing the application for modification filed by the petitioner for waiver with further pre-deposit of Rs. 20,00,000/- and further issuance of a writ of mandamus directing the CESTAT to hear the appeal on merits without insisting on further pre-deposit urging various grounds.

2. At the stage of preliminary hearing, we directed the petitioner''s counsel to take out notice on the learned standing counsel for the respondent. Notice was served. Sri N.R. Bhaskar, learned Counsel has appeared and we have heard him also.

3. An application u/s 35F of the Central Excise Act 1944 was filed by the petitioner before the CESTAT in the appeal praying to stay the operation of the order impugned therein dated 23-12-2008 passed by the respondent till the final disposal of the appeal. The said application was rejected by the CESTAT vide order dated 7-8-2009 directing the petitioner herein to deposit an amount of Rs. 25,00,000/- within a period of 8 weeks from the date of the order and report

compliance. Thereafter, an application was filed by the petitioner seeking modification of the order dated 7-8-2009 in the appeal giving certain particulars and contended that the total liability towards the excise duty is only 9,95,928/- taking into consideration the turnover of the structurals fabricated at site and the SSI benefit which is extended to the petitioner in the show cause notice itself. The Commissioner without taking into consideration the turnover of the job worker, the duty is determined which is challenged before the CESTAT urging various grounds. The Tribunal has rejected the said application. Aggrieved by the said order dated 12-11-2009, the present writ petition is filed.

4. Sri N.R. Bhaskar, learned Counsel for the respondent sought to justify the order impugned in this petition contending that it is a discretionary order. The Tribunal after having satisfied that undue hardship would not be caused has rightly exercised the discretionary power directing the petitioner to deposit a sum of Rs. 25,00,000/- since the duty determined is more than 1 crore likesum towards penalty and a further penalty of 10 lakhs is also imposed upon the petitioner. He has also placed reliance on the decision of the Hon''ble Supreme Court in the case of Indu Nissan Oxo Chemicals Ind. Ltd. Vs. Union of India (UOI) and Others, in support of the order of the CESTAT. Therefore, it is submitted by him that absolutely there is no justification for this Court to interfere with the said discretionary order passed by the CESTAT, in exercise of its discretionary power.

5. Having heard the learned Counsel for both sides, we have carefully perused the application filed by the petitioner seeking for waiver of the deposit of the duty and penalty imposed upon the petitioner and the application for modification of the stay order. The Tribunal being an appellate authority has exercised its discretionary power and rejected the application to modify its earlier order for waiver of the pre-deposit amount to maintain the Appeal of this petitioner. After considering the relevant facts stated in the application having regard to the nature of the order impugned in the appeal before the CESTAT, we do not find that the order impugned in this appeal warrants our interference in this petition particularly, having regard to the fact that the CESTAT recorded a prima facie case that the pre-deposit waiver is not required in the instant case and directed the petitioner to deposit a sum of Rs. 25,00,000/- in the appeal filed before it.

6. In this view of the matter, we do not find any good reason to interfere with the order of CESTAT in exercise of our judicial review power in this writ petition. Hence, the petition stands dismissed as devoid of merit.