
(2014) 04 MP CK 0094

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5448 of 2014

Bharat Heavy Electricals Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35

Citation : (2015) 316 ELT 84

Hon'ble Judges : S.K. Palo, J;Rajendra Menon, J

Bench : Division Bench

Advocate : Z.U. Alvi, Advocates for the Appellant; S. Dharmadhikari, Advocates for the Respondent

Judgement

1. Shri Z.U. Alvi, learned counsel for the petitioner. Shri S. Dharmadhikari, learned counsel for the respondents.

2. Challenge in this writ petition is made to an interlocutory order dated 19-2-2014, passed by the Commissioner (Appeals) in the matter of permitting waiver of pre-deposit amount in an appeal pending under Section 35 of the Central Excise Act, 1944. Against a demand raised for payment of duty to the tune of Rs. 12,76,94,019/- the appeal in question has been filed and in an application filed for waiver of the pre-deposit, the petitioner has been directed to deposit Rs. 4 crores and the remaining amount is waived. It is the case of the petitioner that the petitioner should be granted 100% waiver of the pre-deposit amount mainly on the ground that the petitioner has a very good case on merit and the entire imposition of duty unsustainable.

3. Shri S. Dharmadhikari, learned counsel for the respondent, objects to the same and submits that the waiver of pre-deposit is permissible on the ground of any financial hardship, and the same is not pointed out by the petitioner and in the absence of any such assertion being made, the discretion exercised is not sustainable.

4. We find much force in the objections raised by Shri Dharmadhikari, waiver of pre-deposit is not sought on the ground of financial hardship or economic constrain or showing any reason on the part of the petitioner as to why the amount cannot be deposited except for contending that they have a very good case and their appeal is likely to be allowed, no other ground is pointed out, which goes to show that the petitioner has any hardship in the matter from making pre-deposit.

5. Keeping in view the facts and circumstances of the case, we see no reason to interfere with the discretion exercised by the appellate authority in the matter of rejecting prayer for waiver of the pre-deposit. Accordingly, the petition stands dismissed.