
(2021) 09 DEL CK 0155

In the Delhi High Court

Case No : Civil Writ Petition No. 11127 Of 2021, Civil Miscellaneous No. 34276 Of 2021

Bhavya Creators Private Limited

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 30-09-2021

Acts Referred:

Finance Act, 1994 — Section 87(b)(i)
Central Excise Act, 1944 — Section 35F
Customs Act, 1962 — Section 129E

Citation : (2021) 09 DEL CK 0155

Hon'ble Judges : Manmohan, J; Navin Chawla, J

Bench : Division Bench

Advocate : Navin Kumar, Harpreet Singh, Rajiv Kapur, Kushboo Kapur, Akshit Kapur

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ petition has been filed challenging the Notice dated 24th July, 2019 issued by the Respondent No 2. Petitioner also seeks directions to the Respondents to de freeze the Bank Account bearing no 30054061864 with State Bank of India.

2. Learned counsel for the Petitioner states that the Respondent No. 2 has issued the impugned notice under section 87(b)(i) of the Finance Act, 1994 directing the Respondent No. 3 to freeze the Petitioner's bank account. He submits that the Notice has been issued without jurisdiction and in violation of the Circular dated 16th September 2014 issued by the Respondent No. 1, which categorically provides that "No coercive measures for the recovery of balance amount i.e. the amount in excess of 7.5% or 10% deposited in terms of Section 35F of Central Excise Act, 1944 or Section 129E of Customs Act' 1962 shall be taken during the pendency of appeal"

3. Learned Counsel for the Petitioner states that the Petitioner has already complied with the mandatory requirement of deposit of 7.5% of the total alleged demand before filing of the appeal on 13th November 2019. He submits that it is settled law that once a party deposits the mandatory amount of 7.5%, there is no reason for recovery of any further amount from the Petitioner during the pendency of the appeal. He relies on the decision of the Customs, Central Excise and Service Tax Tribunal in Kala Mines and Minerals Vs Commissioner of Customs, Central Excise & Service Tax Goa; Appeal No. ST/85150/2015-MUM

4. Learned Counsel for the Petitioner also states that the appeal has been pending for a long time and the Appellate Tribunal has not heard the appeal for the last two years. He states that the Petitioner has also filed an application for early hearing of the appeal filed before the Appellate Tribunal but the said application is pending disposal since June, 2021. He also states that the Respondent No.2 has neither replied to the letter of request for de-freezing of the bank account nor issued any direction to the Respondent No. 3 for de-freezing of the Bank Account, causing a huge loss to the Petitioner.

5. Issue notice. Mr.Harpreet Singh, learned standing counsel accepts on behalf of the Revenue and Mr.Rajiv Kapur, Advocate accepts notice on behalf of respondent no.3-State Bank of India.

6. Mr.Harpreet Singh states that the Customs, Excise and Service Tax Appellate Tribunal is functional and appeals are being regularly heard by the said Tribunal.

7. In view of the aforesaid, this Court directs the registry of Customs, Excise and Service Tax Appellate Tribunal to list the Petitioner's appeal before the appropriate Bench on or before 10th October, 2021. This Court clarifies that it has not commented upon the merit of the controversy. The rights and contentions of all the parties are left open. A copy of this order shall be communicated by Registry of this Court to Registry of Customs, Excise and Service Tax Appellate Tribunal forthwith. Accordingly, the present writ petition along with pending application stands disposed of.