(2014) 09 KAR CK 0193

In the Karnataka High Court

Case No : CEA No. 100005/2014 and CEA Nos. 100002, 100003, 100004, 100006, 100007 of 2014

Commissioner of Central Excise — APPELLANT

Vs

Ultra-Tech Cement Ltd. — RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35C

Citation : (2014) 09 KAR CK 0193

Hon'ble Judges : Ram Mohan Reddy, J;B. Manohar, J

Bench : Division Bench

Advocate : S.N. Rajendra, Advocate for the Appellant; Ravi Shankar and Chandra Kumar, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—Having heard the learned counsel for the appellant, common questions of law and that of fact arise for decision making, hence these appeals are clubbed together and finally heard and disposed of by this common order.

2. The crucial question for decision making is:

"Whether the Central Excise and Service Tax Appellate Tribunal, South Zone, Bangalore Bench, for short ''the CESTAT'' was justified in extending the interim order of stay, beyond the period of 180 days as provided under proviso to sub section 2A of Section 35C of the Central Excise Act, 1944, in pending appeals?"

3. The reason assigned by the CESTAT in extending the interim order of stay until disposal of the appeals is that there is large pendency of matters in appeals and the delay is unavoidable.

4. In 2005 (123) ECR 6 (SC). when similar such situation arose, it was observed thus:

"6. The sub-section which was introduced in terrorem cannot be construed as punishing the assessees for matters which may be completely beyond their control. For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed within the time specified. The reasoning of the Tribunal expressed in the impugned order and as expressed in the Larger Bench matter, namely, IPCL v. Commissioner of Central Excise, Vadodara (supra) cannot be faulted. However we should not be understood as holding that any latitude is given to the Tribunal to extend the period of stay except on good cause and only if the Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Tribunal for reasons not attributable to the assessee."

5. In the facts of these cases too, CESTAT having extended the period of stay on a good cause i.e., it had large number of appeals pending hearing and was satisfied that the appeals could not be heard and disposed of by reason of that of the Tribunal not attributable to the assessee, the observation of the Apex Court in Kumar Cotton Mills'' case, is apposite.

6. The question formulated supra, is accordingly answered. The appeals devoid of merit, are accordingly rejected.

IA-I/2014 in CEA 100004/2014 and CEA 100006/2014 do not survive for consideration and are rejected.