(2014) 06 KAR CK 0115

In the Karnataka High Court

Case No : CEA No. 100001 of 2014

Commr. of C. Ex., Cus. and Service Tax	APPELLANT
Vs	
Shree Renuka Sugars Ltd.	RESPONDENT

Date of Decision : 18-06-2014

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

Citation : (2014) 309 ELT 655 : (2015) 30 GSTR 243

Hon'ble Judges : P.D. Waingankar, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : S.N. Rajendra, Advocate for the Appellant; Sangram S. Kulkarni, Advocate for the Respondent

Judgement

1. Appellant is before this Court under Section 35G of the Central Excise Act, 1944, challenging the order dated 21-5-2013 made in Application Misc/25971/2013 filed in Appeal No. E/1057/2010 on the file of Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore, insofar as extending the interim order granted on 21-6-2012 till disposal of the appeal at Annexure "B". Learned counsel for the appellant submits that the respondent has filed an appeal before the Tribunal in Appeal No. E/1057/2010. The Tribunal by order dated 21-6-2012 granted an interim order of stay for a period of 180 days. Since the appeal was not disposed of, the respondent filed an application for extension of stay granted on 21-6-2012 and accordingly the interim order granted on 21-6-2012 was extended till disposal of the appeal. He further submits that as per sub-section (2A) of Section 35C of the Act, where any order of stay is made in any proceedings relating to an appeal filed under sub-section (1) of Section 35B, the Tribunal shall dispose of the same within a period of 180 days from the date of such order and if said appeal is not disposed of within a period specified in the first proviso, the stay order shall on the expiry of that order stands vacated. But the Tribunal erred in extending the interim order granted on 21-6-2012 until disposal of the appeal, which is contrary to the proviso to sub-section (2A) of Section 35C of the Central Excise Act, 1944. He

also submits that 3rd proviso to sub-section (2A) of Section 35C has been inserted by the Finance Act, 2013.

2. Learned counsel for the respondent submits that the Tribunal has extended the interim order granted on 21-6-2012 till the disposal of the appeal as the appeal could not be disposed of for no fault of the appellant and there is no merit in the appeal. He also submits that the appellant could have moved the Tribunal to vacate the stay order granted instead of approaching this Court.

3. Learned counsel appearing for the appellant submits that in identical cases, this Court by order dated 17-7-2013 made in CEA No. 21/2011 allowed the appeal and the matter was remitted to the Tribunal for fresh consideration of the application filed by the assessee and pass orders in accordance with law.

4. It is pertinent to mention that when the Co-ordinate Bench of this Court passed the order dated 17-7-2013 in CEA No. 31/2011 at Annexure "E", the 3rd proviso was not brought to the notice of the Court. According to the 3rd proviso to sub-section (2A) of Section 35C of the Act, an application could be made to the Tribunal by a party and on being satisfied that the delay in disposing of the appeal is not attributable to such party, extend the period of stay to such further period as it thinks fit not exceeding one hundred and eighty-five days and in case the appeal is not so disposed of within the total period of three hundred and sixty-five days from the date of order referred to in the first proviso the stay order shall, on the expiry of the said period, stand vacated. In view of the said proviso, the appellant can move the Tribunal either for vacating stay or for disposal of the appeal as the case may be. In view of the above, we pass the following order. Appeal is disposed of with liberty to the appellant to approach the Tribunal and seek appropriate order.