(2013) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 5118 and 5138 of 2013

Cynosure Enterprises Ltd. — APPELLANT

Vs

Commissioner of C. Ex. — RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Citation : (2013) 297 ELT 488

Hon'ble Judges : M.S. Ramachandra Rao, J;G. Raghuram, J

Bench : Division Bench

Advocate : V. Hari Haran and B. Srinivas, for the Appellant; A. Rajasekhar Reddy, Senior Standing Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

M.S. Ramachandra Rao, J.—Heard Sri V. Hari Haran, learned counsel for the petitioner in W.P. No. 5118 of 2013, Sri B. Srinivas, learned counsel for the petitioner in W.P. No. 5138 of 2013 and Sri A. Rajasekhar Reddy, learned Senior Standing Counsel for the respondents in both the writ petitions. The petitioners herein were assessed to excise duty along with interest and penalty under the provisions of the Central Excise Act, 1944 by the 1st respondent vide orders dated 21-10-2011 and 11-7-2012 respectively.

2. Challenging the same, the petitioner in W.P. No. 5118 of 2013 filed appeal before the appellate authority, who dismissed the same on 26-3-2012. Aggrieved thereby, the petitioner has preferred in May 2012, an Appeal No. E/1678/2012 before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short Tribunal'') along with Stay Application No. E/1191/2012 and sought dispensing with the condition of pre-deposit of duty, interest and penalty apart from staying recovery of the same till the disposal of the appeal by the Tribunal.

3. The petitioner in W.P No. 5138 of 2013 also filed Appeal No. E/2795/2012 before the Tribunal along with a Stay Petition No. E/Stay/2032/2012 and sought

waiver of requirement of pre-deposit of the disputed duty, interest and penalty pending disposal of the appeal.

4. On account of a vacancy in the Tribunal due to the retirement of a technical member, the Tribunal was not able to take up the stay applications in the above appeals filed by the petitioners before it.

5. Meanwhile a Circular, dated 1-1-2013 has been issued by the Central Board of Customs and Excise, Government of India, Ministry of Finance, Department of Revenue, New Delhi directing recovery of the disputed duty, interest and penalty if no stay orders are granted within 30 days of filing of the appeal before the Tribunal.

6. Pursuant thereto, it is alleged by the petitioners that coercive steps for recovery have been initiated by the respondent including attachment/detention of property and goods belonging to the petitioners. The petitioner in W.P. No. 5138 of 2013 has also filed a copy of a detention order dated 7-2-2013 passed by the 3rd respondent detaining the property and goods of the petitioner therein for recovery of the above dues. The petitioner in W.P. 5118 of 2013 has alleged that the respondents are threatening to attach it''s property and goods.

7. The petitioners contend that they have filed appeals before the Tribunal challenging the Order-in-Original and Order-in-Appeal respectively passed against them; that they have prima facie case and balance of convenience in their favour; that pending consideration of their stay applications by the Tribunal, if coercive measures are taken by respondents to recover the disputed duty, interest and penalty, it would render their appeals infructuous; and therefore appropriate directions be granted restraining the respondents from recovering the dues of disputed duty, interest and penalty pending consideration of the stay applications in the appeals filed by them.

8. The learned counsel for the respondents have not disputed that there was, for a considerable time, a vacancy in the office of technical member in the Tribunal, but pointed out that recently the said vacancy has been filled up.

9. In view of the fact that there was a vacancy for considerable time in the Tribunal on account of absence of a technical member; and it was not functioning till very recently for that reason; although a new member is appointed to fill the said vacancy, it would still take time for it to deal with all the pending stay applications in the appeals which have been filed before it since the said vacancy arose, we are of the view that interests of justice would be met if the respondents are restrained from making recovery of the disputed duty, interest and penalty from the petitioners, pending consideration of their stay applications in the appeals preferred by them before the Tribunal which are pending. The detention order dated 7-2-2013 of the 3rd respondent in W.P. No. 5138 of 2013 is quashed. The writ petitions are disposed of with the above directions. No costs.

