(2015) 03 DEL CK 0378

In the Delhi High Court

Case No : CEAC No. 13 of 2015

Dalmia Bharat Sugar and Industries Ltd. APPELLANT

Vs

C.E. and S.T., Ltu, New Delhi RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Citation : (2015) 323 ELT 289

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Prashant Shukla, for the Appellant; Satish Kumar, Sr. SC, Advocates for the Respondent

Judgement

S. Ravindra Bhat, J—Admit. Issue notice. Mr. Satish Kumar, Advocate accepts notice on behalf of respondent.

2. The question of law urged by the appellant is:

"Whether in the instant case the direction of the CESTAT to deposit Rs. 5 crores as pre-condition for the hearing of the appeal was justified."

3. The appellant''s composite manufacturing unit is having interdependent and integrated plants for manufacturing sugar and alcohol. The appellant is manufacturing sugar and molasses from sugarcane. The assessee sought the benefit of Notification No. 3/2005 in respect of Rectified Spirit (RS), Absolute Alcohol (AA) Extra Neutral Alcohol (ENA). All conforming to the alcohol volume in excess of 95%. The Excise authorities issues a Show Cause Notice (SCN), inter alia, contending that the exemption is inapplicable and also stated that the Cenvat credit cannot be claimed by the assessee. The appellant''s replies to the SCN and its adjudication culminated in an adverse order. It appealed to the CESTAT which by the impugned order imposed an obligation to deposit Rs. 5 crores as pre-condition for hearing.

4. The assessee relied upon recent order of the Bombay High Court reported as

Niphad Sakhar Karkhana Ltd. Vs. Commissioner of C. Ex., Nashik, (2014) 300 ELT 66 . The Court on that occasion observed as follows:

"In view of the above, we set aside the impugned order and direct the Tribunal to decide the stay application afresh. However, while considering the stay application both the decisions of the Tribunal in the matter of Ugar Sugar Works Ltd. referred to herein above would be considered to take a prima facie view whether the same is applicable to the facts of the present case before directing the amount of pre-deposit required to be made by the appellant for the purpose of entertaining its appeal on merits. All contentions of both parties are left open to be urged before the Tribunal. The appeal is disposed of with the above directions."

5. Learned Counsel for the Revenue contends that case is distinguishable on the facts and relies upon the Order-in-Original to say that relevant chapter headings having been mentioned in the exemption notification dated 1-3-2005 whereas on the other hand it is contended that Heading 2207 in addition to "ethyl alcohol and other spirits, denatured of any strength", also covers "un-denatured ethyl alcohol of alcoholic strength by volume of 80% vol. or higher. It is then contended that since there is no mention of products which the assessee is concerned with and therefore it is not entitled to the credits claimed since the goods are not excisable. Prima facie, it appears that Revenue''s argument is at loggerheads with the notification. As noticed by the Bombay High Court in its ruling in Niphad Sakhar (supra) all the tariff entries w.e.f. 1-3-2005 and the consequent exemption notification has resulted in a different regime. Even otherwise the submission made by the Revenue to the effect might be startling, consequent prima facie on the logic which appeals to the Bombay High Court comment for acceptance of this Court. As a result the impugned direction to deposit Rs. 5 crores is hereby set aside. The assessee''s appeal shall be heard on merits and disposed of in accordance with law. The appeal is consequently allowed in the above terms.

