(2012) 04 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 4420 of 2012

Devta Steel Rolling Mills — APPELLANT

Vs

Commissioner of C. Ex., Chandigarh — RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35H, 35K(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 195 ECR 35 : (2012) 285 ELT 186

Hon'ble Judges : Gurmeet Singh Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : T.S. Chandok, for the Appellant; Sukhdev Sharma, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—Prayer in this petition filed under Articles 226/ 227 of the Constitution of India is for quashing of notices/letters dated 30-11-2011 and 23-2-2012, Annexures P.4 and P.5 respectively issued by respondent No. 3 whereby the petitioner-firm has been directed to make payment of the differential Central Excise duty for the period from 1-7-1999 to 31-3-2000 on account of order dated 26-8-2011, Annexure P.3 passed by this Court in GCR No. 2 of 2003. Briefly, the facts as narrated in the petition may be noticed. The petitioner is a partnership firm at Mandi Gobindgarh. It is engaged in the business of manufacturing steel products. Vide order dated 9-3-2000, the Commissioner, Central Excise, Chandigarh held the petitioner-firm liable to pay differential Central Excise Duty for the period from 1-7-1999 to 31-3-2000. The petitioner-firm filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (in short, "the Tribunal") against the said order. Vide order dated 9-10-2000, Annexure P.1, the said appeal was allowed 2000 (122) ELT 756 Thereafter, the department moved a reference petition u/s 35H of the Central Excise Act, 1944 (in short, "the Act") before this Court for framing question of law arising out of order dated 9-10-2000 vide CCES No. 73 of 2001 which was allowed and a question of law was framed vide order dated 29-7-2002, Annexure P.2. Thus, a statement of the case was called from the Tribunal which was registered as GCR No. 2 of 2003. The GCR was decided by this Court in favour of the department vide order dated 26-8-2011, Annexure P.3. Thereafter, notices Annexures P.4 and P.5 were issued to the petitioner-firm for payment of differential Central Excise duty for the period from 1-7-1999 to 31-3-2000 on account of order dated 26-8-2011 passed by this Court. According to the petitioner, the order dated 9-10-2000 has not been varied so far and thus, the department cannot claim payment of differential duty from it merely on the basis of decision in the reference petition. The petitioner, thus, impugns the notices Annexures P.4 and 5 through the present writ petition.

2. Learned counsel for the petitioner submitted that the Tribunal had adjudicated the matter in its favour on 9-10-2000 vide Annexure P. 1 which order has not been set aside so far. According to the learned counsel, though the reference which was filed by the department was decided in their favour but unless an order in consonance with the opinion of this Court in GCR No. 2 of 2003 dated 26-8-2011 was passed by the Tribunal in terms of Section 35K(1) of the Act, no recovery could have been effected from the petitioner-firm.

3. Opposing the prayer, learned counsel for the revenue submitted that Annexures P.4 and P.5 have been issued to safeguard the interest of the revenue as the reference has been decided against the assessee-petitioner.

4. After giving thoughtful consideration to the submissions made by learned counsel for the parties, we find force in the contentions raised by learned counsel for the petitioner.

5. It would be expedient to refer to Section 35K(1) of the Act at the relevant time which reads as under :-

35K. Decision of High Court or Supreme Court on the case stated. - (1) The High Court or the Supreme Court hearing any such case shall decide the questions of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment."

6. A bare reading of the aforesaid provision clearly shows that the Tribunal after the decision by the High Court or the Supreme Court is required to pass order to dispose of the case in conformity with such judgment. Unless, such an order is passed, the earlier order passed by the Tribunal remains in existence. It is not disputed that in the present case, no such order has been passed by the Tribunal so far in terms of the judgment delivered by this Court on 26-8-2011 in GCR No. 2 of 2003. Once that is so, the action taken by respondent No. 3 vide Annexures P.4 and P.5 cannot be legally sustained. Accordingly, this petition is allowed. However, it shall be open to the revenue to act against the petitioner as and

when the order is passed by the Tribunal in terms of Section 35K(1) of the Act.

