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(2001) 02 DEL CK 0119

In the Delhi High Court

Case No : CWP No. 4370 of 2000

D.P. Steel Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-02-2001

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

Citation : (2001) 134 ELT 46

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : P.K. Mittal, for the Appellant; Neeraj Kaul and Vivek B. Saharya, for the Respondent

Judgement

Arijit Pasayat, C.J.—Challenge in this writ petition is to the order passed by Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (in short CEGAT), dated 11-5-2000 dealing with the application for waiver of pre-deposit for entertaining the appeal filed by the petitioner under the Central Excise Act, 1944 (in short, the Act) total demand raised was Rs. 20,18,685/- excluding penalty of Rs. 10 lakhs. The original order was passed by the Commissioner of Central Excise, New Delhi. By order dated 8-2-2000 the petitioner was directed to deposit a sum of Rs. 5 lakhs on or before 10-5-2000 and to report compliance by 17-5-2000. An application for medication was filed on 2-3-2000. The same was disposed of by order dated 11-5-2000. Though the medication application was rejected, yet in the interest of natural justice, time for deposit was extended till 26-5-2000 and the compliance was to be reported on 5-6-2000. Matter was again taken up by CEGAT on 5-6-2000 and on that date, the petitioner was heard CEGAT noticed that though time had been extended and a sum of Rs. 5 lakhs was to be deposited against demand of nearly Rs. 30 lakhs, there was non-compliance with the direction for deposit. Above being the position, appeal was dismissed for non-compliance with the provisions of Section 35F of the Act.

2. In support of the writ petition, it has been stated that in case of similarly

situated persons, matter has been remanded to the jurisdiction Commissioner of Central Excise for fresh adjudication. Learned Counsel for the respondent on the other hand, submitted that the grounds made out now for the interference are not available to be taken and the case of the petitioner stands on an altogether different footing from that of the persons in whose cases matter was remanded to the Jurisdictional Commissioner of Central Excise.

3. At the present juncture, we do not think it necessary to go in for detailed examination of the question whether the persons whose case were remanded and the petitioner stand on similar footing or not. In fact, that would depend upon the analysis of the factual positions, which shall be undertaken at the time of final hearing. We find that the petitioner has not complied with the directions of CEGAT though sufficient opportunity was granted to it. The first order was passed in February, 2000 and ultimately time till 26-5-2000 was granted for making the deposit. In the circumstances, we find that the action of CEGAT in not entertaining the appeal cannot be faulted. However, we fell that, in the interest of justice, petitioner can be granted another opportunity to deposit Rs. 5 lakhs within 4 weeks from today. If it is done and an application for restoration is filed along with proof of deposit, CEGAT shall restore the appeal and shall hear it on merits if it is otherwise free from defects.

4. Accordingly this petition is disposed of.

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