(2008) 07 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Enchanted Woods Club Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35F
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 12 STR 260

Hon'ble Judges : Satish Kumar Mittal, J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioner has invoked the extra-ordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India for quashing the order dated 4-6-2008 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as ''the Tribunal'') whereby the application filed by the petitioner for waiver of pre-deposit of amount of Service tax of Rs. 70,47,618/- and penalties of equal amount has been partly allowed to the extent that if the petitioner deposits an amount of Rs. 15 lakhs within a period of eight weeks, the remaining pre-deposit amount of Service tax and penalties shall remain waived.

2. In the present case, the Commissioner of Central Excise vide his Or-der-in-Original dated 25-2-2008 confirmed the demand of Rs. 70,47,618/- along with equal amount of penalty. Against the said order, the petitioner filed an appeal before the Tribunal along with an application for waiving pre-deposit amount. It is a fact that during the inquiry the petitioner had already deposited a sum of Rs. 9,96,540/-. Regarding the remaining amount, the petitioner moved the aforesaid application. In view of the admitted fact that the petitioner Club became operational w.e.f. 4-9-2006 and started providing services from that date, it was observed that prima facie, the service of the petitioner Club is liable to Service tax w.e.f. 16-6-2005, therefore, the instant case is not a fit case for total waiver

of pre-deposit of amount of Service tax and penalties. However, keeping in view the facts and circumstances of the case, the Tribunal has waived the amount of Service tax and penalties subject to payment of Rs. 15 lakhs in addition to an amount of Rs. 9,96,540/- already paid.

3. After hearing the Counsel for the petitioner and going through the impugned order, we do not find any ground to interfere in the said order as in our view the Tribunal has exercised the discretion vested in it under proviso to Section 35F of the Central Excise Act, 1944 by considering all relevant facts. At the time of consideration of application for waiver of pre-deposit, the Tribunal is not required to embark upon a detailed inquiry to find out whether the applicant has a strong case or not. The only requirement is that the Tribunal must take into consideration the relevant factors as to whether there is a prima facie case in favour of the assessee or the balance of convenience lies in its favour or not. Once the Tribunal has passed the order by application of mind then such an order does not require any interference by this Court in exercise of the writ jurisdiction.

4. In our opinion, keeping in view the total demand against the petitioner and in safeguarding the interest of revenue, the Tribunal has rightly waived the pre-deposit of remaining amount of Service tax and penalties, subject to payment of the aforesaid amount already deposited.

5. Thus, we do not find any merit in this petition and the same is hereby dismissed.

