(2013) 12 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Appeal No. 94 of 2013

Evinix Accessories (P.) Ltd. APPELLANT

Vs

Commissioner of Central Excise, Delhi-IV RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2014) 307 ELT 251 : (2014) 43 GST 504

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Advocate : Deepak Gupta, for the Appellant;

Judgement

Rajive Bhalla, J.—The appellant challenges order dated 10.10.2012 (A-2), directing pre-deposit and order dated 24.01.2013 (Annexure

A-1), dismissing the appeal, both passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as ''the

Tribunal''). Counsel for the appellant submits that appellant is an hundred per cent export oriented unit. The mere fact that the appellant may have

made local clearances above the permissible limit of Rs. 3,79,77,000/-, is insufficient to invite duty particularly as the appellant''s application for

grant of further permission was pending consideration. It is further contended that order passed by the Tribunal directing the appellant to deposit

entire duty as a pre-condition to the hearing of the appeal is illegal and may be set aside.

It is further submitted that dismissal of the appeal, for want of compliance with the order of pre-deposit may as a consequence, be set aside. It is

further submitted that as the appellant''s unit has been closed since 2009, it has no funds to deposit duty and, therefore, the Tribunal may be directed to decide the appeal on merits.

2. We have heard counsel for the appellant, perused the impugned orders and find no reason to entertain the appeal much less hold that the

Tribunal has committed any error of jurisdiction.

3. Admittedly, the appellant is a hundred per cent export unit which was allowed to make local clearances, by the Development Commissioner, up

to Rs. 3,79,77,000/-. Admittedly the total value of clearances made by the appellant was Rs. 4,50,97,063/-. The appellant was, therefore,

required to pay duty on the excess clearance. While considering the appellant''s prayer for stay, the learned Tribunal has held that as permission

was not granted for clearances beyond the permissible limit, the appellant has not been able to make out a prima facie case. The appellant was

directed to pre-deposit the entire amount. A relevant extract from order, dated 10.10.2012, reads as follows:--

7. In respect of a 100% EOU, it is the Development Commissioner, who monitors the export performance and on the basis of the Export

Performance and also achieving a positive NFE DTA sales are permitted. For the period till 30.03.2000, there is no dispute that DTA clearances

of the appellant were in excess of the DTA sales permitted by the Development Commissioner by Rs. 71,20,105/-. The appellant have not

produced any letter from the office of the Development Commissioner showing that for the period till 31.03.2008, the quantity of their permitted

DTA clearances had been enhanced by the Development Commissioner. Therefore, we are of the prima facie view that for 2007-2008 period i.e.,

for the period upto 31.3.2008, the DTA clearances made by the appellant were in excess of the permitted clearances by an amount of Rs.

71,20,105/-and the same cannot be said to be in accordance with the provisions of para. 6.8 of the Foreign Trade Policy and hence, would not be

eligible for confessional rate of duty.

8. As regards, the period 1.4.2008 to 30.09.2008, the appellant not produced any letter from the Development Commissioner permitting the DTA

clearances for this period. In absence of the Development''s letter, it cannot be said that during this period the appellant had achieved positive NFE

or that DATA clearances were within 50% of the FOB value of the exports. In view of this, we are of the prima facie view that for this period also, the appellant would not be eligible for confessional rate of duty under Notification No. 23/03-CE.

4. A perusal of the aforesaid extract does not indicate any error of jurisdiction or of law, on the part of the Tribunal as should invite interference.

The appellant is unable to point out any fact or press into service any legal provision that would raise an inference that permission, beyond the

permissible limit, was granted. The appellant''s plea that it applied for further permission on 09.03.2008, is irrelevant, as the appellant is unable to

refer to any order accepting this application. As regards the appeal, the Tribunal rightly dismissed the appeal for want of compliance with order

dated 10.10.2012. The appellant''s plea that as the unit has since closed down, the appellant has no funds, could have been relevant if the appellant

had agreed to deposit some part of the duty claimed. In the absence of any such offer, the financial distress of the appellant cannot be considered.

In view of what has been narrated hereinabove, the appeal is dismissed.