(2011) 12 KAR CK 0418

In the Karnataka High Court

Case No : Writ Petition No. 43171 of 2011 (T-RES)

Federal Mogul TPR India Ltd. APPELLANT

Vs

Commissioner of C. Ex., Bangalore-II RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:
Central Excise Act, 1944 — Section 35 C, 35 F

Citation : (2012) 280 ELT 19 : (2013) 20 GSTR 544 : (2013) 61 VST 419

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Shri V. Lakshmikumaran, for the Appellant; Shri N.R. Bhaskar, for the Respondent

Judgement

1. Though this matter is posted for orders, by consent of learned Counsel for the parties. It is taken up for final hearing, heard and disposed of by this order. An order-in-original dated 25-9-2009 (Annexure-B) came to be passed by the 1st respondent determining the service tax, interest and the penalty payable by the petitioner. The petitioner filed the appeals in Nos. E/1159/2009 and E/1160/2009 challenging the said order before the Customs, Excise and Service Tax Appellate Tribunal, Bangalore, (for short ''the CESTAT''). In the said appeals, the petitioner has filed the Applications Nos. E/Stay/789/09 and E/Stay/790/09 seeking exemption from making pre-deposit as provide u/s 35F of the Central Excise Act, 1944. The CESTAT has passed an order at Annexure-C dated 19-5-2010 waiving the pre-deposit and also granting stay of recovery, pursuant to the order-in-original referred to above. The Revenue filed an appeal before the Division Bench of this Court in CEA No. 112/2010 challenging he said order. This Court after hearing the parties disposed of the appeal on 25-8-2011 holding as under :

In this case, the impugned order was passed on 19-5-2010. This case was filed on 4-12-2010 and the interim stay was granted on 25-3-2011. The appeal should have been disposed of at any rate before 180 days when there is an order of stay as contemplated u/s 35C of the Act. The contention that due to the stay order, the application is not disposed is not acceptable and there is no substance in the said contention. At any rate, as already sufficient time has elapsed, in the circumstances of the case, we deem it proper to direct the Tribunal to dispose of the appeal on or before 30th of September 2011 positively. The assessee shall co-operate with the Tribunal in disposing of this appeal. If the assessee does not co-operate and the Tribunal does not dispose of the appeal within 30 days, the impugned order passed in this appeal stands set aside and the assessee shall deposit the amount, which is the subject matter of the appeal before the Tribunal.

2. It is clear from the aforesaid order that the CESTAT was directed to dispose of the appeals on or before 30-9-2011. The petitioner was directed to cooperate with the CESTAT in disposing of the appeals. This Court further held that if the assessee does not co-operate with the CESTAT and the CESTAT does not dispose of the appeals within 30 days, the interim order passed by the CESTAT stands set aside and assessee should deposit the amount which is the subject matter of the appeals before the CESTAT. The petitioner filed a memo as per Annexure-E dated 5-9-2011 before the CESTAT to take up the appeals for final disposal. This was followed by yet another memo at Annexure-F dated 20-9-2011 for the similar purpose. Thereafter, the petitioner sent a letter to the Superintendent of Central Excise, Bangalore, as per Annexure-G dated 21-9-2011, requesting him not to take action to recover the disputed tax till the appeals are disposed of.

3. It is not in dispute that the appeals were listed on 3-10-2011 and on that day, the matters were heard and reserved for orders. However, the CESTAT has not passed the orders till this day. In the meantime, the Superintendent of Central Excise, Bangalore, has wrote a letter at Annexure-J dated 11-11-2011 requesting the petitioner to deposit the amount, which is the subject matter of the appeals before the Tribunal. In the said letter, the Superintendent of Central Excise, has stated that since the CESTAT has not disposed of the appeals as per the orders of this Court, the petitioner is required to deposit the amount in question. That is why the petitioner has filed this writ petition for a mandamus restraining the respondents from seizing the factory or any of its belongings till the pronouncement of the order by the CESTAT in Appeal Nos. E/1159/2009 and E/1160/2009 and for certain other reliefs.

4. I have heard the learned Counsel for the parties.

5. As noticed above, the Division Bench of this Court has directed the CESTAT to dispose of the appeals on or before 30-9-2011 positively. This Court has directed the assessee to co-operate with the Tribunal in disposing of the appeals. If the assessee does not co-operate with the Tribunal and if the Tribunal does not dispose of the appeals within 30 days, the interim order passed by the CESTAT stands set aside and the assessee has to deposit the entire tax pursuant to the order-in-original at Annexure-B. The materials on record clearly disclose that the petitioner has co-operated with the CESTAT for disposal of the appeals. In fact, even before the receipt of the order of this Court, the petitioner has informed the CESTAT by filing the memos at Annexures-''E'' and ''F'' to take up the appeals for

final hearing. It is the common case of the parties that the appeals were heard on merits on 3-10-2011 and reserved for orders. Therefore, the respondents cannot contend that the petitioner has not co-operated with the CESTAT for disposal of the appeals. The Division Bench of this Court has clearly stated that if the assessee does not co-operate with the CESTAT for disposal of the appeals, the interim order passed by the CESTAT stands set aside and assessee has to deposit the amount. As noticed above, the petitioner has co-operated with the CESTAT and the CESTAT has already reserved the matter. Having regard to the facts and circumstances of the case, I direct the respondents not take steps to recover the amount in question till the disposal of the appeals. I am sure that the CESTAT will dispose of the Appeal Nos. E/1159/2009 and E/1160/2009 as early as possible. Learned counsel for the petitioner is directed to produce a copy of this order before the CESTAT immediately on its receipt. Needless to say that the CESTAT shall not be influenced by this order while disposing of the appeals. Writ petition stands disposed of accordingly. No costs.