(2015) 11 P&H CK 0126

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 20104 of 2015

Gilan Intel Cables Limited — APPELLANT

Vs

Customs, Excise and Service Tax Appellate Tribunal and Others — RESPONDENT

Date of Decision : 16-11-2015

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2016) 332 ELT 74

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Manoj Kumar, Advocate, for the Appellant; Kamal Sehgal and Rajesh Hooda, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—Short reply by way of affidavit of Commissioner of Central Excise and Service Tax, Faridabad I, New CGO Complex, NH IV, Faridabad on behalf of the respondents dated 13.11.2015 filed today in court is taken on record.

2. The petitioner prays for a direction to the Tribunal to hear the appeal filed by it as it has complied with the condition of pre-deposit of Rs. 8 lacs.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is holding Central Excise Registration No. AABCS8756RXM001 for the manufacture of wire and cables falling under Chapter Heading 8544 of the Schedule to the Central Excise Tariff Act, 1985. On scrutiny of the monthly ER 1 returns, it was noticed that it had stopped manufacturing activities from the month of July 2004. The Range Superintendent asked the petitioner to submit information before shifting of the plant and machinery as it had availed Cenvat Credit amounting to Rs. 13,00,604/- on the capital goods installed in its premises. Vide letter dated 7.7.2005, the petitioner

informed that no capital goods from its factory to Patna Sahib had been transferred but undertook to submit the details of disposal. Vide letter dated 8.7.2005, the petitioner intimated that the machines on which Cenvat credit was availed had rusted and ceased to function and as such it had sold the same scrap for a value of Rs. 5 lacs. Vide letters dated 18.7.2005 and 28.7.2005, the Range Officer demanded copies of the invoices alongwith duty paying documents with regard to disposal of the said machinery. Vide letter dated 3.8.2005, the petitioner submitted a copy of Store Challan No. 51 dated 11.4.2005 showing sale of machinery scrap valued at Rs. 5 lacs without charging any central excise duty from the buyer. The petitioner further clarified that no Central Excise duty was paid on such scrap. On perusal of the said challan, it was found that the buyer''s name and address of the goods was not mentioned on it. The goods were sold against cash payments of Rs. 5 lacs. During further enquiries, Shri Narender Singh owner of the truck denied transport of the goods of the petitioner on 11.4.2005 by his truck. The department issued show cause notice dated 5.6.2008, Annexure P.1 to the petitioner proposing recovery of an amount of Rs. 13,00,604/-. The petitioner filed its reply dated 3.2.2009, Annexure P.2 denying the allegations. The adjudicating authority did not accept the submissions made by the petitioner and passed the order dated 19.8.2009, Annexure P.3 confirming the demand of duty of Rs. 13,00,604/- alongwith interest and penalty from the petitioner. Aggrieved by the order, the petitioner filed appeal before the Commissioner (Appeals). Vide order dated 13.9.2010, Annexure P.4, the appeal was dismissed. Still not satisfied, the petitioner filed appeal as well as stay application before the Tribunal contending that when there was no provision under the Central Excise Rules for payment of duty on capital goods rendered as scrap during the relevant period, then neither any duty could be demanded nor any penalty could be imposed. Vide order dated 13.5.2011, Annexure P.5, the Tribunal directed the petitioner to make pre-deposit of Rs. 8 lacs to hear the appeal. The petitioner filed appeal before this court. This court did not interfere with the order on merits but extended the period by one month for pre-deposit of amount of Rs. 8 lacs to hear the appeal. However, the petitioner could not deposit the pre deposit amount of Rs. 8 lacs within the time allowed by this court due to financial hardship. The Tribunal dismissed the appeal of the petitioner vide order dated 30.9.2011, Annexure P.6 for non compliance of the order dated 13.5.2011 passed by it. Now the petitioner has deposited the amount of Rs. 8 lacs vide challan dated 19.2.2015 and intimated the same to the Assistant Commissioner and prays for hearing the appeal by the Tribunal. Hence the instant petition by the petitioner.

4. In the written statement filed on behalf of the respondents, it has been stated that the petitioner had filed an appeal before the Tribunal against the order dated 13.9.2010 passed by the Commissioner (Appeals). The Tribunal vide order dated 13.5.2011 passed a conditional stay order and directed the appellant to deposit Rs. 8 lacs within eight weeks. The petitioner instead of complying with the said order filed CWP No. 16013 of 2011 in this court which was dismissed vide order

dated 30.8.2011. However, this court extended the time by one month for depositing the amount. The petitioner even did not deposit the amount within the said period. Therefore, the Tribunal dismissed the appeal vide order dated 30.9.2011. After the lapse of four years, the petitioner has filed the present writ petition seeking the same relief. The petitioner has thus concealed the fact of filing of earlier petition in this Court. Consequently, on this short ground alone, prayer for dismissal of the petition has been made.

5. We have heard learned counsel for the parties.

6. After hearing learned counsel for the parties and perusal of record, we find that CWP No. 16013 of 2011 had been earlier filed by the petitioner seeking similar relief. The said writ petition was dismissed by this Court vide order dated 30.8.2011. The petitioner has concealed this fact while filing the present writ petition. In para 20 of the writ petition, the petitioner has stated that no such similar Civil Writ Petition has previously been filed by it before this court or the Supreme Court of India. On this short ground alone, the petition is liable to be dismissed. Hon''ble the Apex Court delving into the issue of concealment of facts in V. Chandrasekaran and Another Vs. The Administrative Officer and Others, , observed as under:--

"34. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a Court of Equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiorem", means that it is a law of nature that one should not be enriched by causing loss or injury to another. (Vide: The Ramjas Foundation and Others Vs. Union of India and Others, ; Noorduddin Vs. Dr K.L. Anand, ; and Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, .

35. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.

36. In Dalip Singh Vs. State of U.P. and Others, , this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who

touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

37. The truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. (Vide: Ritesh Tewari and Another Vs. State of U.P. and Others, ; and Amar Singh Vs. Union of India (UOI) and Others, ."

7. Additionally, this Court while dismissing earlier CWP No. 16013 of 2011 on 30.8.2011 had extended the time by one month for depositing the amount. The said order also remained uncomplied with as the petitioner never deposited any amount in pursuance to the order dated 30.8.2011 extending the time. The appeal was dismissed by the Tribunal on 30.9.2011. Besides concealment of factum of filing of CWP No. 16013 of 2011 is there on the part of the petitioner disentitling it to any discretionary relief under Articles 226 /227 of the Constitution, the present writ also suffers from delay and laches as well.

8. In view of the above, we are not inclined to entertain the present writ petition and consequently, the same is hereby dismissed.

