(2011) 12 KAR CK 0416

In the Karnataka High Court

Case No : Writ Petition No. 41315 of 2011 (T-TAR)

Givaudan India Pvt. Ltd. APPELLANT

Vs

Commissioner of Customs, Bangalore RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:
Customs Act, 1962 — Section 129 E

Citation : (2012) 279 ELT 207

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : S.S. Nagananda, for Shyam Koundinya, A.S, for the Appellant; N.R. Bhaskar, for the Respondent

Judgement

S. Abdul Nazeer, J.—An Order-in-Original at Annexure-F dated 31-8-2002 was passed by the Commissioner of Customs, Bangalore determining the duty, penalty and interest payable by the petitioner. Feeling aggrieved by the said order, the petitioner filed Appeal Nos. Customs/212, 213, 216, 260 and 336/2010 before the Customs Excise and Service Tax Appellate Tribunal, K.G. Road, Bangalore. Along with the appeals, the petitioner also filed an application u/ s 129E of the Customs Act, 1962, (for short ''the Act) seeking waiver of pre-deposit of the duty, interest and penalty in terms of the Order-in-Original. The Appellate Tribunal has passed an order at Annexure-H dated 28-9-2011 directing the petitioner to deposit a sum of ` 2.5 crores within 10 weeks and report compliance on 14-12-2011. Subject to the deposit of the amount as above, the Appellate Tribunal waived the pre-deposit of balance of dues as per the order at Annexure-F. The petitioner has called in question the validity of the said order in this writ petition. Sri S.S. Nagananda, learned Senior Counsel, would contend that the petitioner has good case on merits. It is argued that the petitioner has already deposited a sum of ` 85,48,462.40 ps. towards pre-deposit. Since the petitioner is not liable to pay any amount as per the order at Annexure-F, the direction of the Appellate Tribunal to deposit the amount in a sum of ` 2.5 crores towards pre-deposit is unreasonable.

2. On the other hand, Sri N.R. Bhaskar, learned Counsel for the respondent has sought to justify the impugned order. It is argued that the petitioner is bound to follow the direction of the Appellate Tribunal. It has to deposit the amount in terms of the order at Annexure-F.

3. I have carefully considered the arguments of the learned Counsel for the parties and perused the materials placed on record.

4. In the course of the order, the Appellate Tribunal has recorded the findings as under :

In respect of Appeal No. C/216/2010, prima facie we accept the submission that the applicant is an assessee who is processing the imported materials and supplying the processed materials and, therefore, it will be a fit case for waiver of the pre-deposit.

Having recorded the said finding, the Appellate Tribunal has directed the petitioner to deposit a sum of ` 2.5 crores within 10 weeks and report compliance on or before 14-12-2011. Even according to the Appellate Tribunal, the petitioner has a prima facie case. Learned Counsel for the parties agree that the appeals are ready for final hearing. I am of the view that it is just and proper for the Appellate Tribunal to dispose of the appeals at an early date. It is not in dispute that the petitioner has already deposited a sum of ` 85,48,462.40 ps. Therefore, I direct the Customs Excise and Service Tax Appellate Tribunal, Bangalore, to dispose of the appeals, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Pending disposal of the appeals, the respondent is directed not to recover the balance of the disputed tax. Recovery of the disputed tax is subject to the order, which may be passed by the Appellate Tribunal. The writ petition is disposed of accordingly. No costs.