(2018) 12 RAJ CK 0097

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13318 Of 2018

Global Syntex (Bhilwara) Ltd APPELLANT

Vs

Customs, Excise And Service Tax Appellate Tribunal And Ors RESPONDENT

Date of Decision : 01-12-2018

Acts Referred:

Central Excise Act, 1944 — Section 11AC, 35G
Constitution of India 1950 — Article 226, 227

Citation : (2018) 12 RAJ CK 0097

Hon'ble Judges : Dinesh Mehta, J;Sangeet Lodha,J

Bench : Division Bench

Advocate : Hemant Bhati, Sanjay Nahar

Final Decision : Dismissed

Judgement

The petitioner Company has invoked writ jurisdiction of this Court enshrined under Article 226/227 of the Constitution of India, laying challenge to the order dated 07.02.2012, passed by the Customs Excise & Service Tax Appellate Tribunal (hereinafter referred to as "the CESTAT"). The present writ petition impugning the order passed in February 2012 has been filed on 31.08.2018.

The facts relevant are that the petitioner Company engaged in manufacture of processed man-made fabric, was served with a show cause notice dated 03.07.2002; in furtherance whereof, an order in original dated 26.03.2003 came to be passed by the adjudicating authority, namely Commissioner of Central Excise, whereby a demand of Rs.2,23,64,285/- and like amount of penalty had been raised.

The petitioner challenged the said order before the CESTAT, which set aside the same vide its order dated 26.08.2003, as the adjudicating authority had not supplied the relied upon documents to the petitioner.

Subsequent thereto, another order came to be passed by the adjudicating authority on 23.08.2004, whereby not only the duty of Rs.2,23,64,285/- was confirmed, an equal amount of penalty (Rs.2,23,64,285/-) was also inflicted upon the petitioner under Section 11AC of the Central Excise Act, 1944 (hereinafter referred to as "the Act of 1944").

The appellant approached the CESTAT feeling aggrieved with the said order dated 23.08.2004, by way of filling an appeal along with a stay application/ application for waiver of pre-deposit. The Tribunal vide its order dated 07.02.2005 disposed of petitioner's application seeking waiver of pre-deposit and directed the petitioner to deposit a sum of Rs.25 lacs within a period of eight weeks from the date of passing of the order viz. 07.02.2005.

It is the case of the petitioner that due to financial constraints, it could not deposit the aforesaid amount of Rs.25 lacs within the stipulated period. For want of the compliance of the conditions, the stay granted by the Tribunal came to be vacated and the appeal itself was rejected by the Tribunal, vide its order dated 13.05.2005.

The petitioner's appeal before this Court, against the rejection of the appeal vide order above referred too come to be rejected vide order dated 03.02.2006, albeit, with the observation quoted below :-

"if the petitioner deposits the aforesaid amount of Rs.25 Lacs, it would be open for the respondent No.1 to restore the appeal to be heard on merit".

A Special Leave Petition against the order of the High Court was filed before the Supreme Court, which was however withdrawn by the petitioner, with the leave to approach the Tribunal.

Meanwhile, the petitioner approached Board of Industrial and Financial Reconstruction (hereinafter referred to as "the BIFR") as its net worth became negative. During the proceedings before the BIFR, curiously on petitioner's request, the BIFR passed an order dated 04.03.2010 and permitted the petitioner Company to deposit the amount of Rs. 25 lacs within two weeks, with a corresponding direction to the CESTAT to hear the company's appeal on deposit of Rs.25 lacs. It will not be out of place to reproduce the stipulation contained in the BIFR's order dated 04.03.2010, which runs as under :-

"(c) The company would deposit Rs.25.00 lacs with Excise Department out of the direction of 25%, by CESTAT within two weeks. In the interest of revival of the company, CESTAT is directed to consider hearing the company's appeal on deposit of Rs.25.00 lacs."

The petitioner however deposited the aforesaid amount of Rs.25 lacs on 25.06.2010, after about 15 weeks as against 2 weeks' time allowed by the Tribunal. The petitioner then moved the CESTAT by way of filing an application on 03.08.2010 and prayed that the order dated 13.05.2005 rejecting its appeal be recalled and the appeal be heard on merit.

The said application filed by the petitioner came to be dismissed by the CESTAT, vide its order dated 07.02.2012 inter-alia holding that the BIFR is not an appellate authority / an authority competent to modify or alter the order passed by it and also because the aforesaid amount of Rs.25 lacs was deposited on 25.06.2010, after the expiry of the period stipulated in the order of the BIFR dated 04.03.2010.

Confronted with the jugglery of the facts, this Court cannot lose sight of the fact that an appeal under Section 35G of the Act of 1944 lies against the order of the CESTAT before this Court and the petition under Article 226 of the Constitution of India is not proper remedy. The petitioner having filed an appeal before this Court against the earlier order dated 13.05.2005 of the Tribunal cannot circumvent such course or remedy.

The present writ petition laying challenge to the order passed by the CESTAT way back on 07.02.2012, is apparently a subterfuge to overcome the hurdle of limitation which stands expired six years ago.

Be that as it may, we are firmly of the view that the writ petition at hands is not maintainable. It is thus dismissed in limine.

