(2012) 06 AHC CK 0003

In the Allahabad High Court

Case No : Central Excise Appeal No. 625 of 2012

Goyal Financial Services APPELLANT

Vs

Commr. of Cus., C. Ex. and Service Tax RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Citation : (2013) 293 ELT 22

Hon'ble Judges : Sheo Kumar Singh, J;Ram Surat Ram (Maurya), J

Bench : Division Bench

Advocate : Vishal Agarwal, for the Appellant; S.P. Kesarwani, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard counsel for the appellant and Sri S.P. Kesarwani for the Department. This appeal has been filed against the order passed by the Member (Judicial), Customs, Excise and Service Tax Appellate Tribunal.

2. There is no dispute about the fact that earlier an appeal was filed before the Customs, Excise and Service Tax Appellate Tribunal where the appeal is otherwise maintainable on the deposit of 100% of the tax liability.

3. Sri Kesarwani submits that under the provisions of the Act and in the given sets of facts of the case, it is for the Tribunal to waive the condition.

4. From the order of the Appellate Tribunal dated 10-8-2011, it is clear that the appellant''s side made a request to deposit the pre-deposit amount of Rs. 3,70,000/- which was permitted by the Tribunal.

5. When the order was not complied with, the appellant filed Central Excise Appeal No. 264/2011 in this court which was dismissed on 29-9-2011. The relevant portion of the order of this court is quoted below:-

The order of pre-deposit has been passed on the admission of counsel for the appellant. The appellant did not choose to either make argument on merits or pleaded his financial condition before the Tribunal.

6. After the orders of the court, the petitioner again appears to have moved a modification application and that too was rejected. As the order for deposit of the amount as noted above was not complied with, the Tribunal had no option but to dismiss the appeal.

7. Once the order of the Appellate Tribunal dated 10-8-2010 stood confirmed by this court by order dated 29-9-2011, there appears to be no justification for the petitioner to make request before the Tribunal to modify the earlier order.

8. If for want of compliance of the earlier order passed by the Tribunal as confirmed by this court, the appeal has been rejected, we find no error in the order impugned in this appeal.

9. It is made clear only this aspect having been argued, we have noticed the details in this respect. For the reasons given above, this appeal fails and is accordingly dismissed.