(2008) 03 RAJ CK 0051

In the Rajasthan High Court

Hans Colour Lab and Studio APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:
Finance Act, 1994 — Section 76, 77, 78

Citation : (2008) 217 CTR 220 : (2008) 10 STR 355 : (2008) 15 STT 333 : (2009) 21 VST 197

Hon'ble Judges : Raghuvendra Singh Rathore, J;R.M. Lodha, J

Bench : Division Bench

Judgement

R.M. Lodha, J.—Rule. Returnable forthwith. Mr Kamlakar Sharma, Assistant Solicitor General waives service for the respondents. Keeping in view the controversy raised in the writ petition, we dispose of the matter finally at this stage.

Pursuant to the show cause notice dated 5-9-2006 for short paid service tax, after hearing the petitioner, the order came to be passed by the Assistant Commissioner, Central Excise Department, Alwar directing the petitioner to deposit service tax amounting to Rs. 2,75,042/- for being not entitled to the benefit of Notification dated 1-3-2005. The Assistant Commissioner imposed penalty of Rs. 2,75,042/- u/s 76 of the Finance Act, 1994 and also imposed the penalty in the same amount u/s 78 of that Act. The Assistant Commissioner also imposed a penalty of Rs. 1,000/- u/s 77 of the Act as it failed to submit ST-3 return.

2. Aggrieved by the order of the Assistant Commissioner passed on 29-5-2007, the appeal was preferred by the petitioner to the Commissioner of Central Excise (Appeals). The petitioner also applied for waiver of pre-deposit and for stay of the operation of the order passed by the Assistant Commissioner.

3. The Commissioner (Appeals), Central Excise vide its order dated 8-10-2007 directed the petitioner to deposit a sum of Rs. 2,75,042/- by 22-3-2007, failing

which it was observed that the appeal would stand rejected for want of compliance. The petitioner did not comply with the order dated 8-10-2007 and on the other hand challenged the legality and correctness thereof by filing this writ petition.

4. Having considered the entire matter after hearing the parties, we are of the view that the petitioner had been able to make out a case for partial waiver of pre-deposit. It is not that the petitioner has no case at all in the appeal. As regards the financial condition, the counsel for the petitioner placed before us the petitioner''s balance sheet of the year 2005-2006 which shows liabilities and assets thus:

M/s. Hans Colour Lab Manni Ka Bar, Church Road, Alwar Date 1-4-2005 to 31-3-2006 Balance Sheet year 2005-2006

Liabilities Sch Amount Assets Sch Amount

Shri Ganesh Ji Ma- 11.00 Fixed Assets D 527801.00 Haraj

Properitors Capital A 393374.32 Sundry Debtors E 26112.88 A/x

Unsecured Loans B 627000.00 Closing Stock F 434938.45

Sundry Creditors C 45974.40 Cash & Bank Balance G 65507.39

Loan & Advance Se- 12000.00 curity Security RSEB Alwar ____________ ____________ Total 1066359.72 1066359.72 ____________ ____________

5. It, thus, appears that petitioner has a small colour laboratory and by asking it to deposit the amount of Rs. 2,75,042/-, its right of having the correctness of the order passed by the Assistant Commissioner examined by the appellate authority would be lost. We are, thus, satisfied that 50% of the amount of Rs. 2,75,042/- deserves to be waived. Consequently, we dispose of this writ petition by the following order:

(i) Subject to petitioner''s depositing an amount of Rs. 1,37,521/- with the Commissioner of Appeals-I within two weeks from today, the order dated 26-10-2007 passed in appeal No. 189/(RKS)ST/JPR-I/07 shall stand set aside and appeal would be restored to the file of Commissioner (Appeals-I), Customs and Central Excise, Jaipur.

(ii) The order dated 8-10-2007 also stands modified in terms of afore-stated.

(iii) On the other hand, if the deposit in the sum of Rs. 1,37,521/- is not made by the petitioner within the afore-stated time, the orders dated 8-10-2007 and 26-10-2007 shall stand as it is.

6. No costs.

