(2006) 10 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Hari Om Castings APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Central Excise Tariff Act, 1985 — Section 3
Central Excises and Salt Act, 1944 — Section 35F
Constitution of India, 1950 — Article 226, 227

Citation : (2007) 146 PLR 342

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Judgement

Arvind Kumar, J.—The challenge in this writ petition filed under Articles 226/227 of the Constitution of India is to the orders dated 27.8.2004, 1.7.2004, 29.1.2004 and the order dated 9,4.2003, copies Annexures P-1, P-1/A, P-2 and P-3 respectively.

2. The facts leading to the institution of instant writ petition are that the petitioner M/s Hari Om Castings were engaged in manufacturing of non-alloy steel ingots. According to the petitioner, from September 1997 to December 1998, it opted to discharge duty liability u/s 3-A of the Central Excise Tariff Act, 1985 (in short the Act) read with Rule 96 ZO(3) of the Central Excise Rules, 1994 (for brevity the Rules of 1994). Accordingly, the competent authority fixed the annual capacity of the produce of the Unit as 3200 Metric Tons under the Induction Furnace of Capacity Determination Rules, 1997 and assessed the liability of the petitioner Unit as Rs. 1,66,666/- per month. Since, according to the petitioner, maximum monthly production of its furnace, which was 13 years old was 70 to 80 metric tones, the duty on which would come to Rs. 60,000/- to Rs. 70,000/- per month. They paid a sum of Rs. 9.29 lacs according to its production from September 1997 to December 1998. Besides, the petitioner filed a representation before the competent authority. It is the case of the petitioner that its representation was not decided by the competent authority despite the directions dated 31.3.1998 issued by this Court in C.W.P. No. 4598 of 1998.

Rather, without considering the aforesaid facts that production capacity of its Unit, which is 13 years old is not more than 70 to 80 metric tones, they issued various show cause notices for deposit of excise duty @ Rs. 1,66,666/- per month, totaling to Rs. 17,51,656, as assessed by the Commissioner Central Excise, Commissionerate-I, Chandigarh. Further Addl. Commissioner, Ludhiana vide order dated 9.4.2003, directed the petitioner to deposit a sum of Rs. 17,51,656/- along with 18% interest. In appeal against the order dated 9.4.2003, the Commissioner (Appeals) Central Excise, Ludhiana, though had waived the condition of the pre-deposit of Rs. 4 lacs, but dismissed the appeal on merits vide order dated 29.1.2004. Thereafter, the petitioner approached Customs Excise and Service Tax Appellate Tribunal. Vide order dated 1.7.2004 the Tribunal refused to accept the plea of the petitioner of exemption from pre-deposit. However, the petitioner was directed to deposit a sum of Rs. 8 lacs within a period of six weeks therefrom and subject to deposit of that amount, recovery of balance amount was stayed, Since the petitioner could not comply with the said order dated 1.7.2004, its appeal was dismissed by the Tribunal due to non compliance with the provisions of Section 35-F of Central Excise Act, 1944 (for short the Act of 1944).

3. We have heard learned Counsel for the parties and have gone through the paper-book carefully.

4. It is clear from the provisions of Section 35-F of the Act of 1944, where the appeal relates to any duty which is demanded or penalty levied, then the person desirous of filing an appeal has to deposit the amount of duty demanded or penalty levied, pending the appeal. Pre-deposit is a general rule but an exception is engrafted in the proviso of this section where undue hardship occurs to the aggrieved party, in that event, the pre-deposit can be dispensed with. In this instant case, the Commissioner (Appeals) in its order dated 29.1.2004, upon the application of the petitioner requesting for the waiver of the pre-deposit on the ground of financial hardship had waived the condition of pre-deposit of Rs. 4 lacs u/s 35-F of the Act of 1944. However, the Appellate Tribunal had imposed a condition on pre-deposit of Rs. 8 lacs and on account of non-deposit, dismissed the appeal on this score alone. A bare perusal of the impugned orders show that the Tribunal has not given any reason as to what had impressed them to enhance the amount of pre-deposit from Rs. 4 lacs, so waived by the Commissioner (Appeals) to Rs. 8 lacs. Further, no reasons have been given deviating from the opinion formed by the Commissioner (Appeals) by virtue of which, keeping in view the financial hardship, had waived the condition of pre-deposit. The formation of the opinion by the Tribunal though is a purely subjective process, it must be an honest opinion. The opinion has to be formed by a subjective process but on the basis of the relevant material which, as said above, is missing in the impugned orders.

5. In view of the above, the impugned orders of the Tribunal dated 1.7.2004 and 27.8.2004 are quashed. The matter is remitted to the Tribunal-respondent No. 2

for decision afresh after forming an opinion by passing a speaking order and then to dispose of the appeal in accordance with law. The parties are directed to appear before the Tribunal-respondent No. 2 on 27.11.2006.

6. Petition stands disposed of accordingly.

