(2012) 09 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 4394 of 2012

Harish Dyeing and Printing Works APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Citation : (2013) 289 ELT 93

Hon'ble Judges : Harsha Devani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Kuntal Parikh for Paresh M. Dave, for the Appellant; P.S. Champaneri and Y.N. Ravani, for the Respondent

Judgement

Akil Kureshi, J.—We heard learned advocates, Mr. Kuntal Parikh for the petitioners, Mr. Champaneri and Mr. Ravani for the respondents. Considering the disputes involved, the petition at the request of the learned advocates is taken-up for final hearing at the admission stage. The petitioner has challenged an order dated 11-1-2012 passed by the Customs Excise and Service Tax Appellate Tribunal (''the Tribunal'' for short).

2. The petitioner had taken CENVAT credit of a sum of Rs. 20,29,601/- on unprocessed fabrics procured from the weavers and manufactures of such fabrics. The Joint Commissioner of Central Excise, however, issued a show cause notice on 3-9-2008 as to why such credit should not be recovered on the ground that the petitioners had wrongly availed of such CENVAT credit. On 26-6-2009, the Adjudicating Authority passed an order confirming the demand of Rs. 20,29,601/- with penalty and interest.

3. The petitioners thereupon preferred appeal to the Commissioner (Appeals). On such appeal, the Commissioner passed an order dated 15-10-2009 granting stay in favour of the petitioners on the condition of depositing Rs. 4 lacs or furnishing bank guarantee for such amount. Since within the time permitted by the Appellate Commissioner, the petitioners did not comply with such condition, on

22-12-2009, the Commissioner (Appeals) dismissed both the appeals filed by the petitioners with respect to duty demand and the penalties.

4. The petitioners thereupon approached the Tribunal. The Tribunal, by an order dated 28-9-2010 granted six weeks time to the petitioners to deposit sum of Rs. 4 lacs, upon which, the Commissioner was to hear the appeals on merits. On 3-12-2010 since the petitioners had failed to deposit such sum, the Commissioner rejected the appeals.

5. It is not in dispute that some time in March, 2011 in various installments, the petitioners had deposited the said sum of Rs. 4 lacs. Despite such deposits, the Tribunal by the impugned order, rejected the appeals of the petitioners on the ground that the amount was not deposited within the time permitted nor any extension was sought from the Tribunal. Thereupon, the petitioners have approached this Court. Having heard learned counsel for the parties in view of the fact that the petitioners had deposited the amount of pre-deposit, of course after some delay, we are of the opinion that the petitioners'' appeals are required to be heard on merits. For such purpose, the order of the Tribunal dated 11-1-2012 is set aside. Consequently, the order passed by the Commissioner (Appeals) on 3-12-2010 dismissing the petitioners'' appeals is also set aside. Resultantly, appeals before the Commissioner (Appeals) shall be heard on merits. Petition is disposed of accordingly.

