(2014) 09 MAD CK 0052

In the Madras High Court

Case No : C.M.A. Nos. 2548-2549 of 2014

Hine Hydraulics India P. Ltd. APPELLANT

Vs

Commissioner of Cus. (Sea Imports) RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Citation : (2015) 315 ELT 31

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : Hari Radhakrishnan, Advocates for the Appellant; A.P. Srinivas, AGP (Taxes), Advocates for the Respondent

Judgement

R. Sudhakar, J.—The miscellaneous orders passed by the Tribunal are under challenge before this Court in the above appeals. The following questions of law have been framed for consideration in these appeals:-

"(a) Whether in the facts and circumstances of the case, the Hon''ble Tribunal was justified in rejecting the appellant''s request for early hearing of the appeals?

(b) Whether the Hon''ble Tribunal was right in rejecting the request for early hearing of the appeal without considering the financial hardship being faced by the appellant?"

2. The appellant claims to be an importer of parts of wind operated electricity generators. The department denied the benefit of Notification No. 12/2012-C.E., dated 17-3-2012 for such imports made by the assessee. On appeal before the Commissioner (Appeals), the appellate authority set aside the order of the original authority and allowed the appeal of the assessee. However, despite such an order being passed by the appellate authority, it is the stand of the assessee that the Assessing Officer is directing the assessee/importer to furnish bank guarantee by 25% of the differential duty on imports, on the ground that the department has pursued the matter by way of appeal before the Tribunal. It is the stand of the assessee that since the claim of the department is recurring in

nature and in view of the original authority''s insistence to provide 25% of the differential duty as bank guarantee, much prejudice and financial hardship is caused to the appellant/importer and, therefore, the assessee sought for early hearing before the Tribunal. The Tribunal, taking note of the fact that the goods in issue have already been released and stating that many appeals are yet to be heard, declined to grant early hearing and, accordingly, rejected the petition filed by the appellant/assessee. Hence, the appellant/assessee is before this Court by filing the present appeal.

3. Heard the learned counsel appearing for the appellant and the learned Addl. Government Pleader (Taxes) appearing for the respondent and perused the materials available on record.

4. It is a known fact that the Tribunals of all nature throughout the State are under heavy stress due to heavy pendency and, therefore, any direction to the Tribunal for early hearing of any matter would only be detrimental to the effective functioning of the Tribunal and would put more strain on the already overburdened Tribunal. We, therefore, do not think it fit or proper to fix any time limit for the Tribunal to hear the appeal. However, with reference to the case on hand, taking note of the fact that the appellant has a favourable order at the hands of the Commissioner (Appeals) and despite the same, the original authority is insisting on bank guarantee of 25% of the differential duty, which casts a onerous burden on the appellant/assessee, this Court is of the considered view that the said act on the part of the original authority may not be justified unless the order is reversed by the Tribunal in the appeal filed by the Revenue which is pending consideration. Therefore, we only deem it appropriate to request the Tribunal to consider grant of early hearing of the appeals, preferably within a period three months from the date of receipt of a copy of this order. These appeals are disposed of with the aforesaid observations.

