(2013) 01 KAR CK 0008

In the Karnataka High Court

Case No : CEA No. 40 of 2012

HYVA (India) Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2014) 300 ELT 179

Hon'ble Judges : D.V. Shylendra Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : G. Shivadass, Lakshmi Kumaran and Sridharan, for the Appellant; Jeevan J. Neralgi, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—This is an appeal by the assessee u/s 35G of the Central Excise Act, 1944, (for short ''the Act'') in respect of an order passed by the Tribunal on an application made by the assessee u/s 35F of the Act seeking for waiver of pre-deposit amount, which was the subject matter of the appeal. Subject matter of the appeal in terms of the violation was pre-deposit of a sum of Rs. 3,88,31,569/- differential duty liable for the period of July, 2007 and September, 2008.

2. The Tribunal in terms of its impugned order dated 23-7-2012 based on the application filed u/s 35F of the Act has granted relief to the appellant for waiver of pre-deposit but subject to the condition that the appellant should deposit Rs. 1.14 crore within six weeks from the date of the order and report compliance before the Registrar of the Tribunal by 11-10-2012, etc.

3. It is aggrieved by this order, the present appeal by the assessee under the provisions of the Central Excise Act.

4. This Court in terms of the order dated 12-10-2012 had granted interim stay and had also directed the respondent to file objections, if any. The respondent-the Commissioner of Central Excise has filed an application for vacating the interim order along with an affidavit sworn to by Mr. Shrawan Kumar, Addl.

Commissioner, Central Excise.

5. Respondent has sought for vacating the interim order passed in terms of the provisions of Section 35F of the Act, it is mandatory for a person to deposit the amount, which is the value of the appeal. The Tribunal has after considering prima facie merits of the case, while did not grant total waiver as was sought for, has nevertheless granted waiver to the extent of pre-deposit of 2/3rd of the subject matter and therefore, does not call for interference and the interim order of stay granted by this court should be vacated, as in view of the interim order, the Tribunal is not able to proceed further in the matter. Appearing on behalf of the respondent Mr. Jeevan J. Neralgi, learned counsel, submits that it is not as though the Tribunal has totally declined the relief to the appellant-assessee, substantially it has been granted and the Waiver being not a right and in fact an exception to the mandatory condition for deposit, no interference is called for and the interim order of stay should be vacated and the appeal dismissed, etc.

6. On the other hand, appearing on behalf of the appellant, Mr. G. Shivadass, learned counsel appearing for the appellant has raised two contentions. It is firstly urged that the appellant is an independent manufacturer and not a job worker and therefore, Rule 10A of the [Rules] was not attracted. It is secondly urged that the activity of the assessee was not on behalf of someone else but was for itself etc. In support of his submission Mr. Shivdass, learned counsel has placed reliance on the judgment of the Supreme Court reported in the decision of Basant Industries, Agra Vs. Collector of Central Excise, wherein the provisions of Section2(f) of the Act and erstwhile Rule 8(1) of the [Rules] had come up for interpretation, etc.

7. We have considered the submission made at the Bar. In the present appeal, what is invoked is Rule 10A of the [Rules] by the Revenue and the judgment relied upon by the learned counsel for the appellant is not germane for interpretation to Rule 10A of the [Rules] as it has been introduced in the Statute w.e.f. 2007 onwards. Insofar as point relating to the assessee is concerned, as to whether the assessee is the principal-manufacturer by itself or manufacturer on behalf of someone else. Ongoing into the merits of the matter and on a perusal of the order of the Tribunal does show that the Tribunal had taken this aspect into consideration and also examined the financial position of the assessee and on the other hand, had found there is no financial hardship, which had been pleaded by the assessee.

8. In such circumstances, we do not propose to go further into the merits of the contentions, as it is submitted by Mr. Shivadass, learned counsel the main appeal is pending before the Tribunal and the Tribunal having considered for the purpose of Section 35F of the Act and the order being not one to deny the relief totally in exercise of its jurisdiction has granted substantial relief.

9. We do not find any need to interfere at this stage, in an appeal of this nature against the interim order.

10. We dismiss this appeal. Time for deposit of amount is extended by another four weeks from today. In view of the main appeal itself having been dismissed, I.A.I/2013 for vacating stay is disposed of.