(2015) 02 BOM CK 0202

In the Bombay High Court

Case No : Central Excise Appeal No. 3 of 2014

Ideal Paints Pvt. Ltd. APPELLANT

Vs

Commissioner of C. Ex. (Appeals), Pune-III RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Citation : (2015) 317 ELT 401

Hon'ble Judges : N.W. Sambre, J.;S.C. Dharmadhikari, J.

Bench : Division Bench

Advocate : Advait M. Sethna, Raju R. Thakkar and D.P. Singh, for the Appellant; Jitendra B. Mishra and Y.S. Bhate, Advocates for the Respondent

Judgement

1. This Appeal challenging the order passed on 23rd September, 2013/8th October, 2013 by the Tribunal, according to Mr. Advait Sethna learned Counsel appearing in support of this Appeal, raises some substantial questions of law. The substantial questions of law are that the Tribunal proceeded in absence of the appellant and the Advocate. The Tribunal was therefore not justified while disposing of the Appeal and imposing a condition of payment of the entire amount of duty while remanding the matter to the lower Appellate Authority. This amount is to be deposited for the redetermination and re-adjudication of the appeal. In other words, while restoring the matter back to the lower Appellate Authority, the Tribunal should not have imposed any such condition. The Tribunal''s order and passed in absence of the appellant and the Advocate, therefore, cannot be termed as one favouring the appellant but imposing unreasonable and arbitrary conditions so as to avail of the opportunity given in terms of the order. We have perused the order passed by the Tribunal. The factual background in which the Tribunal passed an order is that the appellant is engaged in the manufacture of Cement Paints. The appellant received a show cause notice on 6th May, 2010 alleging inter alia that it evaded duty of central excise to the extent indicated in the same. A reply was given to this show cause notice by the appellant and they contended that the demand has been raised

relying upon the statement of one Mr. S.D. Ballal, Production Manager of the appellant coupled with the statement of one Mr. Mukesh Goyal. During the course of the adjudication proceedings, the appellant sought leave of the Adjudicating Authority to cross-examine these two persons whose statements have been relied upon by the Revenue.

2. However the grievance is that this request was ignored and the show cause-cum-demand notice came to be confirmed by the Additional Commissioner, Pune-III by his order in original.

3. Against the Order-in-Original dated 27th October, 2011 the Commissioner (Appeals) was approached but he too dismissed the appellants'' appeal by his order dated 17th February, 2012.

4. Aggrieved by the aforesaid two orders, the appellant approached the Tribunal and the Tribunal decided the matter on merits in the absence of the appellant and the Advocate. A complete reading of the Tribunal''s order reveals that it allowed the appeal. It accepted the argument as raised in the memo of the appeal and the grounds thereof that the appellant deserved an opportunity in accordance with the principles of natural justice to meet the contents of the two statements and which have been relied upon while confirming the demand. That aspect having not been dealt with in the appellate order, the Tribunal set aside the appellate order dated 17th February, 2012 and restored the appeal of the appellant to the file of the Commissioner (Appeals) for rehearing and redetermination.

5. Going by and possibly the apprehension that during the course of such proceedings the Revenue may initiate coercive measures for recovery of tax, interest and penalty that the Tribunal took up the application in that behalf and seeking stay, which was preferred by the appellant, and passed a conditional order thereon. That is to be found in paras 9.1 and 9.2 of the impugned order.

6. Mr. Sethna would complain that the Tribunal gave a substantive benefit by the earlier observations and contained till para-9, but, by these two paragraphs took away something which it had thought fit to grant. Meaning thereby by imposing a condition of this nature the proceedings on remand are virtually rendered infructuous. If the appellant cannot meet with the condition, the benefit of the Tribunal''s order will not be available.

7. On the other hand Mr. Mishra supports the Tribunal''s order and submits that it is imminently fair, just and reasonable and takes care of the apprehensions. Further, a technical lapse on the part of the Authority below, should not prejudice the Revenue and that is why the condition of pre-deposit of entire sum demanded has rightly been imposed. The same should not be interfered with because the direction in that behalf is not perverse or vitiated by any error of law apparent on the face of record.

8. After perusing the order passed by the Tribunal, we enquired from Mr. Sethna

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as to why the appellant is aggrieved by paras 9.1 and 9.2. Mr. Sethna, on instructions, states that somebody would have sought this relief on the given date and time from the Tribunal but it would definitely not have been sought in these terms and which are absolute. In the absence of anybody seeking any stay or equitable or discretionary relief, the Tribunal took up the interim application and granted such a relief. Secondly, now there is a subsequent development and that the properties and assets of the appellant have been attached by the Revenue to recover the money/tax by coercive means. That attachment is continuing till date. Therefore no useful purpose would be served by imposing such a condition.

9. Mr. Mishra appearing on behalf of the Revenue has no instructions.

10. In the light of the admitted position and emanating from the appellant that its properties and assets are attached, we are of the view that in the circumstances peculiar to the assessee the direction contained in paras 9.1 and 9.2 of the order under challenge need not be given effect to. The same stands substituted with a direction from us that the attachment levied on the properties of the appellant by the Revenue shall continue till the Commissioner (Appeals) gives effect to the Tribunal''s order. We expect the Revenue not to take any further steps in pursuance to this attachment including to sell attached properties. However, we direct the Commissioner (Appeals) to dispose of the appeal remanded to him by the Tribunal as expeditiously as possible and within a period of three months from the date of receipt of a copy of this order. This would be a fair order and would meet the ends of justice. The Appeal is disposed of in these terms. Baring this modification our order shall not be construed as expression of any opinion on the merits of the controversy. All contentions of both sides are kept open. Our order does not mean that the appellant was denied any opportunity to meet the case of the Revenue as well. That issue is also kept open.

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