(2004) 11 DEL CK 0146

In the Delhi High Court

Case No : Writ Petition (C) 15668 of 2004

Integ Electronics APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35F

Citation : (2004) 115 DLT 163 : (2005) 79 DRJ 36

Hon'ble Judges : B.C. Patel, C.J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : C. Hari Shankar and Harpreet Singh, for the Appellant; Kailash Gambhir, Amit Gupta and Vineet Bhatia, for the Respondent

Judgement

B.C. Patel, C.J.—A show cause notice was issued to the petitioner and ultimately the adjudicating authority vide order dated 28.05.2004 held that the assessed is liable to pay certain amounts, as indicated in the order, the total of which comes to about Rs. 90 lakhs, including duty and penalty. Against the said order of the adjudicating authority, an appeal was preferred and Along with it an application for waiver of pre-deposit u/s 35F of the Central Excise Act, 1944 (hereinafter referred to as ''the Act'') is also made. The Commissioner of Central Excise, Appeals, Delhi-II vide order No. 18/2004, dated 24.08.2004, a copy of which is produced at Annexure P-1 at page 24, inter alia, observed that ''''the appellants have not pleaded for any financial hardship'''' an ultimately held that the appellant company shall make a pre-deposit of Rs. 30 lakhs recoverable from them and compliance report was ordered to be produced within 30 days. It was observed that if there was non-compliance, the appeal shall be dismissed. It is against this order that the present petition is preferred.

2. Our attention is invited to the application submitted before the Commissioner (Appeals) wherein it is specifically stated on oath as under:-

"IV. That, the applicant is financially also not in a position to pre-deposit of the duty demanded. A Copy of the appellant''s latest audited balance sheet as on

31.03.2003 is annexed herewith as Annexure M/1. A perusal of the same will reveal that, the appellant is not in a sound financial position to pre-deposit the amount of duty and penalty, confirmed by the Learned Ad.C."

3. It is clear that in view of this specific statement, the observations made by the learned Commissioner that the appellant have not pleaded for any financial hardship, is incorrect.

4. In view of this, we direct the Commissioner to re-examine the matter and pass the order in accordance with law. It will be open for the learned Commissioner to call for such other information and above all, the balance sheet which is produced on record to satisfy himself/herself as to whether the case pleaded for financial hardship is just and proper or not.

With these directions, the writ petition is disposed of.

Direct Service (dusty).