

(2015) 02 AP CK 0039
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3393 of 2015

K. Rama Mohanarao and Co.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35
Finance Act, 1994 — Section 83

Citation : (2015) 321 ELT 195 : (2015) 50 GST 575

Hon'ble Judges : K.J. Sengupta, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : Laxminarayana Alishetty, for the Appellant; Gopalakrishna Gokhale, Advocates for the Respondent

Judgement

1. Notice before admission returnable in three weeks. Issue notice to the learned Attorney General of India.
2. In this writ petition two points are involved. One is vires of the amendment of Section 35 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Second is retroactivity of this amendment viz., from 06th August 2014.
3. We are of the view that these points require examination by this Court.
4. On second point in this case the aforesaid amendment may not be applicable, as the proceedings were initiated with the issuance of show cause notice in 2013. Therefore, lis has been started long before this amendment.
5. We are of the prima facie view that on the date of initiation of proceedings the right to appeal also accrues on that date, as appeal is in continuation of the original proceedings. In other words, on the date of initiation of lis the aforesaid amendment was not in force. However, during the pendency of this matter the aforesaid amendment is made.
6. In that view of the matter, we mould the interim relief prayed for as follows.

7. The petitioner can very well approach the appellate authority with an application for waiver of pre-deposit. The appellate authority for the time being without insisting upon pre-deposit as per the amended provision, shall consider such application in accordance with law. This order will be effected provided the petitioner prefers an appeal within fifteen days from the date of receipt of a copy of this order and make such application. In case of failure this interim order will stand vacated.

8. Let counter affidavits be filed by the respondents within four weeks from the date of receipt of issue of notice. Affidavit in reply is to be filed within two weeks thereafter. Matter to appear for hearing six weeks hence.