(2013) 03 AHC CK 0304

In the Allahabad High Court

Case No : Central Excise Appeal No. 738 of 2012 and C.E.A. No. 739 of 2012

Khatema Fibres Ltd. APPELLANT

Vs

Commr. of Cus. and Central Excise RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Citation : (2014) 300 ELT 59

Hon'ble Judges : Ram Surat Ram (Maurya), J;Prakash Krishna, J

Bench : Division Bench

Advocate : V.B. Singh, J.P. Pandey and Vijay Sinha, for the Appellant; Ramesh Chandra Shukla, for the Respondent

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri V.B. Singh, Senior Advocate, assisted by Sri Vijay Sinha for the appellant and Sri Ramesh Chandra Shukla for the respondents. The aforementioned appeals have been filed u/s 35G of the Central Excise Act, 1944 (hereinafter referred to as the Act) from the order of Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal) dated 3-4-2012 by which the application for extension of time for deposit of precondition for hearing the appeals have been rejected and consequently the appeals have been dismissed and order dated 16-2-2010 by which the appellants were directed to deposit 60% of the liability as a precondition for hearing the appeals. One appeal has been filed by the Company and another appeal has been filed by its director arising out of same proceeding as such both the appeals are consolidated and heard together. The appellants have proposed several substantial questions of law in the memorandum of the appeal but as the Tribunal has not decided the appeals on merits as such at this stage following substantial question of law is being framed for decision of the appeals:-

Whether the Appellate Tribunal was justified in directing the appellant to deposit 60% of the liability without considering the fact that under the Government scheme, the appellant was entitled for exemption from excise duty and also for the reason that the appellant company has been referred to BIFR under Sick Industrial Companies (Special Provisions) Act, 1985?

2. The facts giving rise to the present appeal are as follows:-

M/s. Khatema Fibres Ltd., Industrial Area, Lohia Head Road, Khatima, Udham Singh Nagar (the appellant) is a company registered under the Companies Act and R.C. Rastogi was its Managing Director. The company was established in the year 1994 and was engaged in the business of manufacture and sale of papers and paperboards. The company has increased its manufacturing capacity by installing new machinery and plant time to time. It is alleged that in the year 2002-03 it has installed pulp manufacturing plant by making a substantial investment. By way of an incentive to promote industrialization in the State of Uttarakhand, by the Notification No. 49/2003-C.E., dated 10-6-2003 issued by Government of India, Ministry of Finance, Department of Revenue, the Government granted exemption from payment of excise duty under Central Excise Act, 1944, to the new industries established after 7-1-2003 and the existing industries who have made substantial expansion by way of increase in installed capacity by not less than 25% after 7-1-2003. The appellant, claiming that it has made substantial expansion and has increased its installed capacity by more than 25% after 7-1-2003 was eligible for exemption from payment of excise duty under the Government Order dated 10-6-2003, applied for grant of exemption from payment of excise duty on 12-11-2003 and has completed all the other formalities on 20-12-2003 before Assistant Commissioner, Central Excise, Division Rampur. Superintendent (Preventive)/Central Excise Commissioner-II, Meerut through his letter dated 1-11-2004 again called some more papers/information from the appellant. Then the appellant again supplied the required papers on 30-11-2004. Central Excise Commissioner-II, Meerut then made some inquiries and recorded statements of the officials of the company on 12-12-2004. Thereafter, the matter remained pending for a long time. Ultimately by letter dated 30-12-2008 a show cause notice has been issued for payment of Central Excise duty, penalty and interest, stating therein that the company was not eligible for the exemption under the Government Order dated 10-6-2003. The appellant submitted its reply on 20-8-2009 to the aforesaid show cause notice. But by Order-in-Original dated 18-12-2009 a demand of Rs. 15,81,69,274/- as the liability of excise duty and same amount of penalty along with interest as payable under the Act has been confirmed.

3. The appellants filed appeals before the Tribunal from the aforesaid order. The Tribunal by order dated 30-8-2010 directed the appellants to deposit 60% of the liability as a precondition for hearing the appeal. The appellants challenged the order dated 30-8-2010 before the Supreme Court but the appeal was withdrawn on 13-5-2011, as in the meantime the appellants had moved an application on 10-1-2011 before the Tribunal for modification of the order dated 30-8-2010. In the meantime by order dated 21-7-2011 the Board, constituted under the Sick Industrial Companies (Special Provisions) Act, 1985, has referred the company to

Board of Industrial and Financial Reconstruction, treating it as a sick company. The Tribunal by the order dated 22-2-2012 rejected the modification application. The appellant then filed an application for extension of time to deposit the 60% of the liability, which was also rejected on 9-4-2012 and consequently the appeals were dismissed.

4. The counsel for the appellants submitted that the appellant fulfilled all the conditions for grant of exemption from payment of Central Excise under the Government order dated 10-6-2003 and has filed the application for grant of exemption on 12-11-2003. The respondents authorities have illegally took unreasonable time in passing final order on the application of the appellant. It has illegally rejected the application by Order-in-Original dated 18-12-2009. The Tribunal without prima facie examining the merit of the appeal, directed to deposit 60% as a precondition for hearing of the appeal. In the meantime a fire took place in the company due to which the financial position of the company has become very poor and it was ultimately referred to Board of Industrial and Financial Reconstruction treating it as a sick company. The appellant moved an application for exempting the appellant from deposit of precondition amount but the Tribunal has rejected it without application of mind holding that it has no power to review its order. On the query being made as to whether the appellant is ready to deposit any amount, the counsel for the appellants informed the Court that in case some time is given, the appellants are ready to deposit Rs. 4 crore.

5. We have considered the arguments of the counsel for the parties. The appeal is a statutory right. The appellant has been deprived of his right of the appeal due to a precondition of deposit of 60% of the liability imposed by the Order-in-Original. While imposing the condition of pre-deposit, the Tribunal is required to examine prima facie merit of the appeal as well as the condition of the appellant. In the impugned order the Tribunal found that the appellant company was running under the financial loss and his request for rescheduling the payment of loan has been accepted by the banks. Even then the appellant was directed to deposit 60% of the liability which was a substantial amount for the appellant. In the financial circumstances of the company, it was an impossibility for it. In the meantime the company was also referred to Board of Industrial and Financial Reconstruction treating it as a sick company. The Supreme Court in Sangfroid Remedies Ltd. Vs. Union of India (UOI) and Others, allowed full exemption from the liability to deposit precondition amount in appeal by the company, which was referred to the Board of Industrial and Financial Reconstruction treating it as a sick company. For the aforesaid discussion, the appeals succeed and are allowed in part. The impugned orders dated 3-4-2012 and 16-2-2010 are set aside subject to the condition that the appellant deposits Rs. 4 crores within 6 weeks from today as a condition precedent for hearing of the appeal before the Tribunal on merits. In case this amount is deposited within the aforesaid period, the appeal before the Tribunal shall stand restored and the Tribunal will decide the appeal on merit.

