(2013) 02 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 4477, 4482, 4500, 4541-4542 and 4544-4545 of 2013

Lee Pharma Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 14-02-2013

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

Citation : (2013) 289 ELT 248

Hon'ble Judges : M.S. Ramachandra Rao, J;Goda Raghuram, J

Bench : Division Bench

Advocate : A. Rajashekar Reddy, Gopala Krishna Gokhaley and Jalakam Sathyaram, for the Respondent

Judgement

Goda Raghuram, J.—Heard the counsel for the petitioner and Sri A. Rajashekar Reddy, Sri Gopala Krishna Gokhaley and Sri Jalakam Sathyaram, learned Standing counsel for the respondents in the several writ petitions. As the core of the grievances presented in these writ petitions falls within a narrow compass insofar as the judicial review is concerned and shares a common characteristic, we dispose of the several writ petitions by this common order.

2. Orders-in-Original were passed under the provisions of the Central Excise Act, 1944 or for levy and collection of Service Tax under the provisions of the Finance Act, 1994 against the several petitioners. In some of the matters, petitioners had preferred appeals against the Orders-in-Original, which were rejected. Aggrieved by the Orders-in-Appeal or Orders-in-Original, as the case may be, further appeals were preferred to the CESTAT, Bangalore Bench (for short ''the Tribunal'').

3. Along with the respective appeals petitioners preferred applications for waiver of the pre-deposit and applications for stay of tax as determined by the Orders-in-Original or as confirmed in Orders-in-Appeals, as the case may be. It is the common refrain in the writ petitions, reiterated in oral argument by the learned counsel that the Bangalore Bench of the Tribunal is not functioning on account of

a vacancy in the office of the Technical Member; and the Tribunal is unable therefore to take up the petitioners applications for waiver for pre-deposit and for grant of stay of levy of the tax, interest and penalties, as the case may be. In some of the writ petitions a Circular dated 1-1-2013 issued by the Central Board of Excise and Customs, New Delhi has been challenged, whereunder a generic directive is issued to Revenue to initiate recovery proceedings 30 days after filing of the appeal, if no stay were granted. Learned counsel for the petitioners however do not wish to pursue the challenge to the Circular in these writ petitions and are satisfied if this Court were to dispose of the writ petitions directing Revenue not to initiate coercive measures till the Tribunal takes up and disposes of the applications preferred by them, seeking waiver of the pre-deposit u/s 35F of the Central Excise Act, 1944, and the applications for grant of stay of collection of the Tax, interest and penalties, as determined, by the Orders-in-Original or as confirmed in orders-in-appeal, as the case may be.

4. Having heard learned counsel for the respective parties and in the context of the current ineffectual functioning of the Tribunal, a fact not disputed by the Revenue, we consider it appropriate to dispose of the writ petitions directing the respondents not to initiate any coercive measures for recovery of the Central Excise liability or Service Tax liability or interest and penalties, as the case may be, as assessed in the Orders-in-Original or as confirmed in the appeals, as the case may be, pending disposal of the applications filed by the petitioners for waiver of pre-deposit and wherever filed, the applications for stay of the Central Excise or Service Tax, interest and penalties, as the case may be. The liability of the petitioners to remit the tax, interest and penalties, as assessed or confirmed, as the case may be, shall be subject to orders to be passed by the Tribunal in the interlocutory applications preferred by the petitioners. The writ petitions are disposed of as above. But in the circumstances without costs.