(2011) 09 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 16535 of 2011

Maruti Suzuki india Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 27-09-2011

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

Citation : (2012) 279 ELT 313

Hon'ble Judges : Jaswant Singh, J;Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to the order dated 26-7-2011 [2011 (24) S.T.R. 366 (Tribunal)] passed by the Customs, Excise & Service Tax Appellate Tribunal (Principal Bench), New Delhi (for short "the Tribunal") whereby request of the petitioner for waiver of pre-deposit of the amount of duty was declined and the entire amount of duty demand was ordered to be deposited within a period of 8 weeks from the date of the order.

2. The Tribunal is seized of an appeal filed by the appellant in respect of the Advertisement Expenses incurred by the dealers of the petitioner in terms of a Scheme known as Joint Advertisement and Sales Promotion Policy (for short "the policy"), claimed by the petitioner as additional consideration for sale and added to the assessable value for the period October 2007 to March 2008.

3. Learned counsel for the petitioner points out that the learned Tribunal in respect of the period from July 2000 to March 2005, in the case of the petitioner itself, has considered the advertisement expenses incurred by the dealer in pursuance of the Policy towards assessable value. The Tribunal has accepted the appeal of the assessee vide order dated 12-8-2008 (Annexure P.4). The Revenue is in appeal against the said order.

4. Learned counsel for the respondent could not dispute the fact that the Tribunal

in its earlier order in respect of an earlier period found that in such cases, expenses incurred are to be included in the assessable value/transaction value of the goods.

5. The Tribunal has taken a view on merits in respect of the earlier period that such expenses incurred by the dealers of the Petitioner in promoting sale are to be included in the assessable value/transaction value of the goods. Therefore, the petitioner has made out a case for waiver of the amount of entire duty before its appeal is entertained for the subsequent period. The impugned order of the learned Tribunal while not waiving of pre-deposit, in terms of Section 35F of the Central Excise Act, 1944, of entire duty demanded from the petitioner causes undue hardship to the petitioner.

6. Consequently, the present petition is allowed and the order dated 26-7-2011, Annexure P-1, is set aside. The learned Tribunal is directed to decide the appeal on merits in accordance with law without insisting upon pre-deposit of the demand raised against the petitioner.