(2015) 04 GUJ CK 0062

In the Gujarat High Court

Case No : Tax Appeal No. 274 of 2015

Modern Tube Industries Limited APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Citation : (2015) 04 GUJ CK 0062

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Tushar P. Hemani, for the Appellant; Vaibhavi K. Parikh, Advocates for the Respondent

Judgement

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Gujarat Value Added Tax Tribunal, Ahmedabad dated 13.10.2014 and the subsequent order dated 14.11.2014 passed in Second Appeal No. 763 of 2014, the appellant-dealer -assessee has preferred present Tax Appeal.

2. That against the order passed by the Assessing Authority confirming the tax liability under the Central Sales Tax Act to the extent of Rs. 1,87,16,953/- + interest and penalty totaling to Rs. 3,84,11,700/-, the assessee preferred appeal before the First Appellate Authority. That the First Appellate Authority directed the appellant herein -original appellant to pay Rs. 1,85,000/- by way of pre-deposit. On non compliance of the order of pre-deposit, the First Appellate Authority dismissed the said appeal. Against the order passed by the First Appellate Authority dismissing the appeal on the ground of pre-deposit, the appellant preferred appeal before the learned Tribunal and prayed for stay as well as waiver of pre-deposit. That by order dated 13.10.2014, the learned Tribunal directed the appellant to deposit a sum of Rs. 5 lacs towards liability under the CST as pre-deposit. The applicant could not and as such did not

deposit the amount of pre-deposit of Rs. 5 lacs against the CST liability and therefore, by order dated 14.11.2014, the learned Tribunal has dismissed the said appeal being Second Appeal No. 763 of 2014.

2.1. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Tribunal, the appellant- original appellant- dealer has preferred present Tax Appeal.

3. After the matter was argued for some time and considering the fact that in the facts and circumstances of the case, the appellant on the basis of calculation submitted by the appellant itself with respect to liability under the CST and the learned Tribunal has directed the appellant to deposit a sum of Rs. 5 lacs as pre-deposit, as we are not inclined to entertain present appeal, Ms. Vaibhavi Parikh, learned advocate for the appellant has requested to grant some reasonable time to the appellant to deposit amount as directed by the learned Tribunal and on such deposit, the First Appellate Authority directed to consider the appeal on merits.

4. In view of the above, while confirming the impugned order passed by the learned Tribunal dated 13.10.2014 directing the appellant to deposit a sum of Rs. 5 lacs as pre-deposit, considering the request of Ms. Parikh, learned advocate for the appellant, we direct that if the appellant deposits Rs. 5 lacs before the appropriate adjudicating authority within a period of two months from today and on production of challan with respect to such payment before the First Appellate Authority, First Appellate Authority is hereby directed to consider the appeal against the order passed by the adjudicating authority with respect to liability under the CST, in accordance with law and on merits. Meaning thereby, if the appellant deposited the aforesaid amount of Rs. 5 lacs with the appropriate authority within a period of two months from today, in that case, the impugned order of the learned Tribunal dismissing the appeal on non deposit of pre-deposit as well as order passed by the First Appellate Authority dismissing the appeal on the ground of pre-deposit are to be treated as quashed and set aside and the learned First Appellate Authority to consider the said appeal in accordance with law and on merits.