

(2023) 05 DEL CK 0368

In the Delhi High Court

Case No : Civil Writ Petition No. 7535 Of 2023

M/S Classic Decorators

APPELLANT

Vs

Commissioner (Appeals-I) Central Excise/GST, Delhi & Anr.

RESPONDENT

Date of Decision : 29-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Central excise Act, 1944 — Section 35F
Finance Act, 1994 — Section 73(1), 78, 78A

Citation : (2023) 05 DEL CK 0368

Hon'ble Judges : Vibhu Bakhru J; Amit Mahajan, J

Bench : Division Bench

Advocate : Mukesh Gupta, S. B. Gandhi, Harpreet Singh, Suhani Mathur, Jatin Kumar Gaur

Final Decision : Disposed Of

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying as under: -

"1. To cancel the order dated 04-05-2023 passed by respondent no.1.

2. To direct the respondent no.1 to decide the appeal on merit without insisting for pre deposit as per section 35F of the Central excise Act, 1944."

2. The petitioner is aggrieved by an order dated 04.05.2023, whereby its appeal against an order-in-original dated 20.12.2022 was not entertained for want of necessary pre-deposit.

3. By the said order-in-original, the Adjudicating Authority had confirmed the demand of service tax of Rs. 17,259, Rs. 63,184/- & Rs. 1,21,731/- including Education Cess, Higher Secondary Education Cess, Swachh Bharat Cess And Krishi Kalyan Cess for the Financial Years 2014-15 to 2016-17, and October 2014 to March, 2015, under the proviso to Section 73(1) of the Finance Act, 1994. The

Adjudicating Authority had also confirmed the demand of Rs. 1,21,731/- for the service tax not paid or wrongly availed. In addition, the Adjudicating Authority also imposed a penalty of Rs. 2,02,174/- under Section 78 of the Finance Act, 1994 and Rs. 1,00,000/- under Section 78A of the Finance Act, 1994.

4. The petitioner had filed the writ petition under Article 226 of the Constitution of India, being Writ Petition No.871/2023 captioned M/s Classic Decorators v. Assistant Commissioner, CGST Division & Ors., impugning the order in original passed by the Adjudicating Authority. The said petition was disposed of on 31.01.2023 on the ground that the petitioner has an equally efficacious alternate remedy. This Court had also observed that, prima facie, the petitioner's contention that the order-in-original is barred by limitation is merited.

5. The learned counsel for the petitioner submits that in view of the observations made by this Court in the order dated 31.01.2023, the petitioner's appeal ought to have been entertained by the Appellate Authority without insisting on pre-deposit.

6. We find no merit in the aforesaid contention. The amount of pre-deposit required is 7.5% of the total demand, which is not a large sum. There is no averment that the requirement of pre-deposit has rendered the appellate remedy illusory or that the petitioner is anyway impeded from availing the same.

7. We find no ground to interfere with the impugned order dated 04.05.2022. We clarify that if the petitioner makes the pre-deposit within a period of two weeks from today, the Appellate Authority shall consider the petitioner's appeal on merits.

8. The petition is disposed of in the aforesaid observations.