(2012) 02 MAD CK 0115

In the Madras High Court

Case No : Writ Petition No. 3594 of 2012

M/s.Kanakadhara Flat Promoters, No. 186/111, Flat No. S-1, Neeladhari, Lake View Road, West Mambalam, Chennai - 600033	APPELLANT
Vs	
The Commissioner of Central Excise (Appeals), No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai - 600034	RESPONDENT

Date of Decision : 15-02-2012

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

Citation : (2012) 190 ECR 195

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : K. Vaitheeswaran, for the Appellant; K. Ravindranath (CGSC), for the Respondent

Judgement

Honourable Mr. Justice M. Jaichandren

1. This writ petition has been filed against the proceedings of the respondent, dated 24.1.2012, made u/s 35F of the Central Excise Act, 1944,

directing the petitioner to make a pre-deposit of the entire service tax amounting to Rs.18,68,852/-, on or before 15.2.2012.

2. It had been stated, in the impugned proceedings of the respondent, that the appeal filed by the petitioner would be rejected, without further

notice, on the failure of the petitioner to comply with the said condition.

3. The learned counsel appearing on behalf of the petitioner had submitted that the petitioner had raised the issue of financial hardship before the

respondent. However, the respondent had not considered the same, properly, before passing the impugned order, dated 24.1.2012.

4. The learned counsel appearing on behalf of the petitioner had submitted that

the petitioner would make a pre-deposit of 50% of the amount of

service tax said to be payable by the petitioner, within a period of four weeks from today. On such deposit being made the respondent shall be

directed to hear the appeal and dispose of the same, on merits and in accordance with law.

5. Per contra, the learned counsel appearing on behalf of the respondent had submitted that the petitioner had not sufficiently substantiated its claim

of financial hardship, with material evidence.

Therefore, the respondent had directed the petitioner to make a pre-deposit of the entire sales tax due from the petitioner, as a pre-condition to

hear the appeal filed by the petitioner.

6. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available,

this Court is of the view that it would be appropriate to direct the petitioner to make a pre-deposit of 50% of the sales tax said to be payable by

the petitioner, within a period of four weeks from today. On such deposit being made the respondent shall hear the appeal, in

A.No.447/2011(MST) and dispose of the same, on merits and in accordance with law, as expeditiously as possible. The Writ Petition is ordered

accordingly. No costs. Consequently, connected miscellaneous petition is closed.