(2013) 11 AP CK 0165

In the Andhra Pradesh High Court

Case No : Writ Petition No. 32200 of 2013

N.S.R. Minerals APPELLANT

Vs

Commr. of Cus,C. Ex. and Service Tax RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 306 ELT 243

Judgement

Kalyan Jyoti Sengupta, C.J.—Learned counsel for the Revenue submits that he does not want to file counter affidavit and we also feel that in a matter of this nature no counter affidavit is required. The petitioner before us approached the Tribunal with a prayer for dispensation of pre-deposit of the penalty amount. It appears from the impugned order that the learned Tribunal has not considered the question of hardship at all though it was specifically stated before it, as argued by the learned counsel for the petitioner.

2. We are of the view that while deciding this sort of problem it is the mandatory duty of the Tribunal to decide the question of undue hardship. To understand in a better way, we set out Section 35F of the Central Excise Act, 1944, which reads as under:

"35F. Deposit, pending appeal of duty demanded or penalty levied.-

Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing."

3. Under the first proviso of the above Section, it is made clear by the Legislature that the Tribunal has to form an opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person. In this case, the learned Tribunal has not made any endeavour to do so and it was swayed by the so-called bad past conduct of the petitioner. We think that there is no scope for adjudging the conduct and misconduct of the litigant when the Legislature has given a protection on certain contingency. In this situation, the Court of law for that matter the Tribunal has nothing but to find whether undue hardship will work.

4. We have checked up the papers before us and we have considered the argument of the learned counsel for the petitioner that material has been produced and so also it was averred before the Tribunal that if pre-deposit is not dispensed with this will cause undue hardship. Unfortunately, the learned Tribunal has not addressed this issue nor decided. We, therefore, set aside the order of the learned Tribunal and remand the matter for fresh hearing. The learned Tribunal after considering the material placed before it shall decide the question of hardship as agitated before us and was agitated before it at the time of hearing of the matter when the impugned order was passed. This exercise shall be completed within a period of three weeks from the date of production of this order. We make it clear that the learned Tribunal shall not be influenced by the reasoning and finding given by it in the impugned order, since the same has been set aside.

5. The writ petition is accordingly allowed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

