(2012) 02 JH CK 0008

In the Jharkhand High Court

Case No : Writ Petition (T) No. 441 of 2012

Panch Sheel Udyog APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Citation : (2013) 57 VST 26

Hon'ble Judges : Prakash Tatia, C.J;P.P. Bhatt, J

Bench : Division Bench

Advocate : Sumeet Gadodia, for the Appellant; Ratnesh Kumar and Amit Kumar, for the Respondent

Judgement

1. The petitioner is aggrieved against the order dated December 19, 2011 (annexure-5), by which the Commissioner (Appeals), Central Excise and Service Tax, Ranchi observed that he has gone through the stay application and in their stay application the appellant has reiterated the contention of their main appeal and there is no mention of any loss that would be caused to them if the demand, interest and penalty is not stayed during the pendency of the appeal. Therefore, the respondents-Commissioner (Appeals) directed the writ petitioner to deposit 50 per cent, of the confirmed demand. Learned counsel for the writ petitioner submitted that the said order was passed without giving an opportunity of hearing to the writ petitioner and the writ petitioner had no knowledge of the date when this matter was taken for consideration before the Commissioner (Appeals).

2. Learned counsel for the respondents submitted that from the perusal of the contents of the stay petition itself, filed before the Commissioner (Appeals), it will reveal that no ground was made out for the stay of the demand.

3. Learned counsel for the writ petitioner submitted that in the Finance Act, 1994, there is no provision for even pre-deposit of the amount for granting the appeal. Be that as it may, the contention of the writ petitioner that he was not

given an opportunity of hearing and he was not knowing the date on which the matter will be taken, merely on this ground alone, this writ petition is allowed and the order dated December 19, 2011 is set aside and the Commissioner (Appeals), Central Excise and Service Tax, Ranchi may pass an appropriate order after giving an opportunity of hearing to the writ petitioner preferably within a period of one month from the date of production of the certified copy of the order by the writ petitioner and may pass an appropriate order after taking into account all the contentions of the parties.

