(2019) 09 UK CK 0077

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2758 Of 2019

Pegasus Farmaco India Private Ltd. & Another — APPELLANT

Vs

Union Of India & Others — RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Central Excise Act, 1944 — Section 35B, 35B(1), 35F, 35(1)
Cenvat Credit Rules, 2001 — Rule 6

Citation : (2019) 09 UK CK 0077

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : P.R. Mullick, Pushpa Bhatt, H.M. Bhatia

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. Petitioner no. 1 before this Court is a private limited company and petitioner no. 2 is the Managing Director of the said company. Petitioners claim certain excise benefits which a new unit is liable to get in form of excise and income tax exemptions given in Uttarakhand for a certain period of time, to new units.

2. Evidently, the petitioners took over the business which was of manufacture of "corrugated boxes". This was done in the year 2016. According to the petitioners, the benefit which the earlier manufacturer was getting was liable to pass on in favour of the petitioners as well till 31.03.2020. Since this was not given, the petitioners went before the Commissioner, Central Goods & Service Tax, Dehradun, where after hearing the petitioners, the Commissioner dismissed the claim of the petitioners.

3. Evidently, the petitioners have a statutory remedy in form of Section 35B of the Central Excise Act, 1944 before the Customs Excise and Service Tax Appellate Tribunal. This Court has been informed that the petitioners have already filed an appeal before the Appellate Authority.

However, the petitioners have to deposit a statutory amount which is 7.5% of the total disputed demand, before the appellate authority. The petitioners have not deposited this statutory deposit, which is mandatory demand as per Section 35F of the aforesaid Act.

4. Section 35F of the Central Excise Act, 1944 reads as under:-

"Section 35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.- The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,-

(i) under sub-section (1) of Section 35, unless the appellant has deposited seven and a half per cent. of the duty in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Commissioner of Central Excise;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of Section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

Explanation.- For the purposes of this section "duty demanded" shall include,-

(i) amount determined under section 11D;

(ii) amount of erroneous Cenvat credit taken;

(iii) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004."

5. The petitioners have instead filed the present writ petition before this Court with the prayer that the authority has not applied its judicial mind while deciding the case of the petitioners. There are various other grounds for challenge such as documentary evidences have not been taken into consideration, etc.

6. All the same, this writ petition is totally misconceived for various reasons. Firstly, there is a statutory remedy available to the petitioners under Section 35B read with Section 35F of the Central Excise Act, 1944 and secondly, the

petitioners have already availed this remedy. However, they have to deposit a statutory demand of 7.5% before the appellate authority before the matter could be heard. The petitioners in order to escape from this statutory liability of depositing of 7.5% of the demand amount have filed this writ petition. This is not permissible.

7. This writ petition is totally misconceived and it is hereby dismissed in limine.

