(2015) 05 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 4663 of 2015

Premier Polyspin Pvt. Ltd. and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 04-05-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11D, 35, 35B, 35F

Citation : (2015) 322 ELT 349

Hon'ble Judges : V.M. Sahai, A.C.J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Hasit Dilip Dave, for the Appellant

Judgement

V.M. Sahai, Acting C.J—This writ petition has been filed for the following relief:

"(A) Your Lordships be pleased to issue an appropriate writ order or direction in the nature of writ of mandamus and or a writ of certiorari and or any other appropriate writ order or direction for quashing and setting aside the impugned order dated 10.11.2014 passed by the Cestat Ahmedabad and modifying the same and directing the Tribunal to hear the case of the petitioner without any pre-deposit.

(B) Pending petition Your Lordships be pleased to stay the implementation of the impugned order dated

(C) Ex-parte ad-interim relief in terms of prayer B above may kindly be granted pending the admission and final disposal of the present petition."

2. By order dated 10.11.2014 passed by the Tribunal, West Zonal, Ahmedabad, rejected the appeal and stay application on the ground that after 8.9.2014 amendment has taken in Section 35F of the Central Excise Act, 1944 and as per the amended Section, the appellant is required to deposit an amount equivalent to 7.5% of the confirmed amount of duty liability. In the case on hand the appellant had deposited Rs. 90,819/- as against confirmed demand of Rs. 1.74

which is not in consonance with the provisions of Section 35F of the Central Excise Act, 1944. Since the appellant had not complied with the provisions of Section 35F of the Central Excise Act, the Tribunal has held that the appellant''s appeal was not entertainable. Hence, the stay application and the appeal both were disposed of by the Tribunal. The order of the Tribunal has been challenged by the petitioner in the present writ petition.

3. Though specified relief has not been claimed, learned counsel for the petitioner has urged that amended Section 35F of the Central Excise Act, 1944, came into force from 6.8.2014 and in the appellant''s case, the order was passed by the adjudicating authority on 30.5.2014. Therefore, learned counsel for the petitioner urged that where the adjudicating authority has passed order levying excise duty after the amendment came in Section 35F of the Central Excise Act, 1944 only there condition of 7.5% of the confirmed amount of duty liability has to be deposited. Amended Section 35F of the Central Excise Act, 1944, is extracted below:

"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 (Principal Commissioner of Central Excise or 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 purpose of this Section "duty demanded" hall 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."

4. There are two aspects of the matter. First, in our opinion, during the pendency of proceedings or after the order passed by the adjudicating authority, if the law is amended and a condition of pre-deposit is also amended in Section 35F of the Central Excise Act, the appellant would have to comply with the provisions as the amended provisions would apply to all the appeals which are filed after coming into force of the amended Act. It is not disputed by learned counsel for the petitioner that he has filed the appeal after the amendment was made in Section 35F of the Central Excise Act. Therefore, the amended provisions would apply and the appeal of the appellant before the CESTAT would not be maintainable in absence of deposit of an amount equivalent to 7.5% of the confirmed amount of duty liability. The other aspect of the matter is that if the argument of the learned counsel for the petitioner is accepted then he is required to pre-deposit 100% of the excise duty levied on him as he has not filed any waiver application under the old provision before the Tribunal exempting him from making any pre-deposit. The Legislature has granted benefit to the assessees by fixing pre-deposit equivalent to 7.5% or 10% of the confirmed amount of duty liability as per the provisions of Section 35F of the Central Excise Act, 1944. Therefore, we do not find any illegality in the impugned order passed by the Tribunal. This writ petition fails and is accordingly dismissed.