(2014) 12 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil MiscWrit Petition Nos. 7486, 3419, 3423, 3543, 3617-3618, 3782, 4116-4117, 4160, 4570, 5907-5908, 7497-7499 of 2014, Civil Writ Petition Nos. 3619, 3723-3727, 3842, 4077, 4080, 4109, 4125, 4133, 4158, 4235, 4261, 4551, 6386 of 2014, .

Rathi TMT Saria Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35C, 35C(2A)

Citation : (2015) 2 CDR 840 : (2015) 316 ELT 370 : (2016) 1 RLW 624 : (2015) 37 STR 912

Hon'ble Judges : Sunil Ambwani, Acting C.J.;J.K. Ranka, J

Bench : Division Bench

Advocate : Sameer Jain, Mahi Yadav, P.K. Kasliwal, Mahesh Sharma, Nirmal Kumar Jain, Atul Sharma and Ashish Kumar Singh, Advocates for the Appellant; Anil Mehta, Vinay Mathur, Tej Prakash Sharma, Ajay Shukla and Sarvesh Jain, Advocates for the Respondent

Judgement

1. We have heard learned Counsel appearing for the petitioners and learned Counsel for the respondents. In D.B. Civil Misc. Writ Petition No. 7486/2014 M/s. Rathi TMT Saria Pvt. Ltd. v. Union of India & Ors., and other connected writ petitions, the petitioners have prayed for directions to quash the orders/letters of recovery and attachment, issued by the respondents, on the expiry of the interim orders passed by the Customs, Excise & Service Tax Appellate Tribunal (for short, ''the CESTAT''), with conditions of pre-deposit under Section 35C(2A) of the Central Excise Act, 1944, which provides that waiver of pre-deposit of the assessed demand, cannot be extended by the CESTAT beyond 365 days.

2. In D.B. Central Excise Appeal Nos. 19/2014 and 20/2014, between the Commissioner of Central Excise and M/s. KEC International Ltd., the Central Excise Department has raised a substantial question of law for determination of the High Court as follows:--

"Whether the Hon''ble CESTAT was right in law in allowing the Miscellaneous Application filed by respondents, overlooking the insertion of third proviso in Section 35C(2A) of the Central Excise Act, 1944 vide Finance Act, 2013 and thereafter by wrongly applying the decision of Hon''ble Supreme Court pronounced in the case of CCE vs. Kumar Cotton Mills Pvt. Ltd.,2005 (123) ECR 6 (SC) , vide which the Interim Stay as granted vide Stay Order No. ST/1737-1738 of 2012, dated 9-10-2012 has been ordered to be continued until further orders?"

3. By the impugned order, the CESTAT has, on an application for extending the stay order which had expired in view of the provisions of Section 35C(2A) of the Central Excise Act, 1944 (for short, ''the Act of 1944''), extended the operation of the stay granted to the respondents, to operate during pendency of the appeals.

4. In all these matters, the question of law raised, is as follows:--

"Whether the Hon''ble CESTAT has erred in granting waiver of pre-deposit of assessed demand in favour of the respondent during pendency of the appeal thereby extending the period of stay beyond 365 days ignoring the recent amendment to Section 35C of the Central Excise Act, 1944?"

5. The question of law raised in these matters seeks interpretation of Section 35C of the Act of 1944. The Supreme Court in CCE vs. Kumar Cotton Mills Pvt. Ltd.,2005 (123) ECR 6 (SC) , while interpreting Section 35C of the Act of 1944, held as follows:--

"6. The sub-section which was introduced in terrorem cannot be construed as punishing the assessees for matters which may be completely beyond their control. For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed within the time specified. The reasoning of the Tribunal expressed in the impugned order and as expressed in the Larger Bench matter, namely, IPCL v. Commissioner of Central Excise, Vadodara (supra) cannot be faulted. However we should not be understood as holding that any latitude is given to the Tribunal to extend the period of stay except on good cause and only if the Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Tribunal for reasons not attributable to the assessee."

6. A third Proviso was added in Section 35C(2A) by the Finance Act, 2013 as follows:--

"Provided also that where such appeal is not disposed of within the period specified in the first proviso, the Appellate Tribunal may, on an application made in this behalf by a party and on being satisfied that the delay in disposing of the appeal is not attributable to such party, extend the period of stay to such further period, as it thinks fit, not exceeding one hundred and eighty-five days, and in case the appeal is not so disposed of within the total period of three hundred and sixty-five days from the date of order referred to in the first proviso, the stay order shall, on the expiry of the said period, stand vacated."

7. It is submitted by learned Counsel appearing for the respondent-Department that the only reason given by the CESTAT for extending the stay order to operate until decision of the appeal, is that the appeal could not be disposed of for no fault of the petitioner, and that in view of pendency of several older appeals, the stay order deserves to be extended till the hearing of appeal.

8. It is submitted by learned Counsel appearing for the respondent-Department that the question raised in the present case is covered by the judgment of the Allahabad High Court in Commissioner of Cus. and C. Ex. Vs. J.P. Transformers, , and the judgment of the Karnataka High Court in The Commissioner of Income Tax C.R. Building, Queens Road Bangalore and The Deputy Commissioner of Income Tax Circle - 11(3), C.R. Building, Queens Road Bangalore Vs. M/s Ecom Gill Coffee Trading Pvt. Ltd., No. 489/11, Borewell Road Whitefield Bangalore - 560066, . In both these cases, the Courts have held that the Appellate Tribunal committed a positive error in consciously extending the interim order of stay granted in the pending appeal beyond the period of 365 days, which is the outer limit stipulated in the statutory provisions.

9. The Allahabad High Court, in view of the fact that there was large pendency of appeals in CESTAT, had disposed of the appeal with direction to the CESTAT to decide the appeal expeditiously and if possible, within a period of six months from the date of last extension, allowed waiver of pre-deposit to continue upto the period of six months.

10. We are also informed that in the Finance Act, 2014, with effect from 1-10-2014, Section 35C(2A) has been omitted and that appeals can be filed now for hearing with a deposit of 10% of the demand.

11. Learned Counsel appearing for the respondents states that there are certain high value matters, in which any delay in deciding the appeal will affect the interest of the Revenue. He states that there are about 5000 matters pending in CESTAT at New Delhi with only two Benches hearing the matters relating to the matters of Notification, Classification and Valuation, and one Bench of a single member for deciding the matters of MODVAT/CENVAT, Service Tax, and Excise Appeal, valued less than Rs. 50 lacs.

12. A request was made by learned Counsel appearing for the assessees that the Court may issue direction to establish more number of Benches and for establishment of Circuit Benches to visit the States to decide the matters. They have relied upon a judgment in Metlife India Insurance Co. Ltd. Vs. Union of India, , in which an observation was made that the Union of India has failed to set up large number of Tribunals such as CESTAT and if this is done, then there would be no cause for complaint over the non-consideration of the applications for stay, in appeals, by only one Tribunal, presently functioning at Bangalore.

13. It is submitted that only two Benches and one single member is looking after

stay matters and hearing of the appeals, arising out of eight States, namely Jammu & Kashmir, Rajasthan, Punjab, Uttar Pradesh, Jharkhand, Chhattisgarh, Delhi and Madhya Pradesh. They have also relied upon para 252 of the speech of Minister of Finance in Lok Sabha, dated July 10, 2014, in which it was stated that to expedite the process of disposal of appeals, amendments have been proposed in the Customs and Central Excise Acts with a view to freeing appellate authorities from hearing stay applications and to take up regular appeals for final disposal. Consequently, the Act was amended with effect from 1-10-2014, omitting Section 35C(2A), with a deposit of 7.5% of the demand for first appeal, and 10% for second appeal.

14. We do not propose to issue any directions in this regard as the matter has to be considered by the Central Government, taking into consideration the pendency of appeals. For the purpose of present matters, we may only observe that the CESTAT will give preference to the high value appeals, keeping in view the interests of the assessee and the Revenue.

15. Considering the facts and circumstances of the case and the pendency of the appeals in the CESTAT, New Delhi, we dispose of the present writ petitions as well as the Excise Appeals, in accordance with the view taken by the Allahabad High Court, with directions to the CESTAT, New Delhi, to decide the appeals as expeditiously as possible, and preferably within a period of six months from today. The waiver of pre-deposit to the extent directed by CESTAT, will be valid until the final disposal of the appeal. This order has been passed with an understanding that the assessees will not seek any unavoidable adjournment. A copy of this order will be placed in all the connected files.

