(2012) 07 DEL CK 0291

In the Delhi High Court

Case No : CEAC 19 of 2012 and CM Appl.10768 of 2012

Sharp Global Ltd APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Citation : (2012) 192 ECR 231 : (2012) 285 ELT 335

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : C. Hari Shankar, with Mr. Pushkar Kr. Singh, for the Appellant; Satish Kumar, Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Heard counsel for the parties. The petitioner seems to be aggrieved by the order dated 20.4.2012 being order No. 50/679-685/2012 Ex. (DB) in 2579/2012 of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The brief facts are that the appellant is a manufacturer of finished menthol products. It used to claim benefit of Cenvat on the ground that purchases were made from Amarnath Industries of Jammu. The State of Jammu and Kashmir is the beneficiary of CESTAT vide notification No. 56/2002-CE dated 14.11.2002 whereby the manufacturer of such products is entitled to claim refund of the duty paid. Director General of Central Excise Intelligence initiated investigations pursuant to which a show cause notice was issued by the manufacturers as well as some other manufacturers including Amarnath Industries. The show cause notice alleged that Amarnath Industries was not actually manufacturing the intermediate product which was procured by the appellant but it used to give support to petitioners to claim cenvat credit. After hearing the parties, the Commissioner of Central Excise by the order in original, upheld against the notices, including that against the present petitioner, and rendered findings that Amarnath Industries was not engaging itself in manufacturing but used to supply only crude oil, used ultimately for the manufacture of petitioner''s products. Ld. counsel for the petitioner urged that the impugned order to the extent that it directs 15% of the duty demanded, which aggregates to Rs. 1,00,00,000/- is unreasonable. It was submitted that having regard to the circumstances, the materials on record and the findings of the CESTAT, the inference drawn by the authority that the appellant is involved in the alleged duty evasion was unreasonable in law. It was urged that the petitioner was in fact bona fide purchasers of the material which might or might not have been manufactured by Amarnath Industries.

2. We have considered THE materials on record. The question of interfering with an interlocutory order of the CESTAT on the question of pre-deposit would arise in such cases when the condition imposed is claimed to have caused excessive or substantial hardship or incapacity. In the present case, the petitioner has in no way claimed that the direction to pay 15% of the duty demanded which works out to Rs. one crore is unreasonable that results in substantial hardship so as to cause prejudice its right to be heard. As far as the findings are concerned, we are satisfied that they cannot be considered as meritless. In the circumstances, we find no ground to interfere.

Appeal is accordingly dismissed.

