(2003) 05 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3015 of 2003

Sohana Woolen Mills Pvt. Ltd. APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F
Constitution of India, 1950 — Article 226

Citation : (2004) 116 ECR 138 : (2004) 170 ELT 526

Hon'ble Judges : N.K. Sud, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Jagmohan Bansal, for the Appellant; Govind Goel, ACGSC, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This petition is directed against order dated 28-1-2003 (Annexure P.5) passed by the Commissioner (Appeals), Central Excise, Ludhiana declining the petitioner''s prayer for waiver of requirement of depositing the disputed amount as a condition precedent to the entertaining of appeal filed by it against the order passed by the adjudicating authority under Central Excise Act, 1944 (for short, ''the 1944 Act'').

2. The main ground on which the petitioner has challenged the impugned order is that while disposing of its application for waiver, the Commissioner (Appeals) did not apply mind to the provisions of Section 35 of the 1944 Act.

3. The respondents have defended the impugned order by asserting that application of mind by the Commissioner (Appeals) is reflected from the fact that the petitioner''s prayer for waiver of pre-deposit was partly accepted by him.

4. We have heard Shri Jagmohan Bansal, learned Counsel for the petitioner and Shri Govind Goel, learned Counsel for the respondents and have perused the impugned order.

5. The petitioner is a public limited company incorporated under the Companies Act, 1956. It is engaged in the manufacture of acrylic yarn falling under Chapter Heading No. 55 of the Schedule to Central Excise Tariff Act, 1985. By an order dated 28-2-2002, Additional Commissioner (P and V), Chandigarh confirmed the demand of Rs. 4,38,898/- raised against the petitioner u/s 11A of the 1944 Act and also levied penalty of an equal amount. By another order dated 27-6-2002, the same authority confirmed the demand of Rs. 6,47,584/- u/s 11A of the 1944 Act and imposed penalty to the tune of an equivalent amount. The petitioner filed appeals against both the orders and also applied for waiver of the requirement of pre-deposit. By an order dated 22-10-2002 (Annexure P. 3), the Commissioner (Appeals) waived the requirement of pre-deposit of the amount of penalty by observing that the petitioner had deposited the entire amount of central excise duty. However, by the impugned order, a similar request made by the petitioner for waiver of pre-deposit of penalty amounting to Rs. 6,47,583/- was disposed of with the direction to the petitioner to deposit Rs. 1.05 lacs within 15 days.

6. In our opinion, the impugned order is vitiated due to non-application of mind of the requirements of proviso to Section 35F of the 1944 Act because a bare reading of the order passed by the Commissioner (Appeals) shows that he has not, at all, considered the issue of hardship while deciding the petitioner''s prayer for waiver and also over-looked the fact that in an identical matter, his predecessor had waived the requirement of pre-deposit of penalty in its entirety.

7. Hence, the writ petition is allowed. Order Annexure P.5 is quashed with a direction to the Commissioner (Appeals) to pass fresh order on the application of the petitioner keeping in view order dated 22-10-2002 (Annexure P. 3) passed by his predecessor. We also give liberty to the petitioner to bring it to the notice of the Commissioner (Appeals) that for the subsequent period, the demand has been quashed.