(2014) 05 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 2154 of 2014

Tharaj Castings Pvt. Ltd. — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35F
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 176 PLR 421

Hon'ble Judges : Anita Chaudhary, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Jagmohan Bansal, Advocates for the Appellant

Judgement

Ajay Kumar Mittal, J.—In this writ petition filed under-Articles 226/227 of the Constitution of India, the petitioner has impugned stay order dated 17.12.2013 (Annexure P-1) passed in Appeal No. E/58574/2013 by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (in short "the Tribunal) directing the petitioner to deposit a sum of Rs. 40 lacs as pre-deposit in terms of Section 35F of the Central Excise Act, 1944. Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner is engaged in the manufacture of Alloy and Non-Alloy Steel Ingots, Castings and auto parts etc. The record of the petitioner was audited by the audit branch of the revenue from 22.7.2007 to 24.7.2009 and it was found that the petitioner was availing cenvat credit on inputs other than waste and scrap of Chapter 7204. The audit branch referred the matter to Preventive Branch of the respondent who searched the premises of the petitioner on 24.12.2009 and resumed its purchase invoices. During the course of investigation, the statements of Directors of the petitioner as well as concerned officials of the seller unit were recorded on various dates. Accordingly, a notice dated 20.4.2012 was issued to the petitioner to show cause as to why cenvat credit amounting to Rs. 1,44,52,571/- along with interest and penalty be not recovered. The petitioner submitted reply dated 16.11.2012 to the said show cause notice. The adjudicating authority vide order dated 11.4.2013 (Annexure P-2) confirmed the demand and also imposed penalty of an equal amount. Feeling aggrieved, the petitioner filed ah appeal along with stay application before the Tribunal. The Tribunal vide order dated 17.12.2013 (Annexure P-1) directed the petitioner to deposit Rs. 40 lacs as a condition precedent for hearing of the appeal. Hence, the present writ petition.

2. Learned counsel for the appellant submitted that the liability has been illegally fastened on the petitioner. It was urged that the requirement of Rs. 40,00,000/- as a pre-deposit as directed by the Tribunal was unfair and excessive.

3. Learned counsel for the revenue opposed the prayer made by the learned counsel for the petitioner and submitted that the amount as directed by the Tribunal was reasonable and justified.

4. The primary dispute that arises for consideration in this petition relates to the quantum of pre-deposit to be made by the petitioner as a condition precedent for the hearing of the appeal by the Tribunal.

5. This Court vide order dated 7.2.2014 directed that on deposit of Rs. 10 lacs by the petitioner by 11.2.2014, the Tribunal shall not dismiss the appeal for want of pre-deposit. However, the deposit was subject to further orders to be passed by this Court. It was stated by learned counsel for the petitioner that the said amount stands deposited by the petitioner.

6. After hearing learned counsel for the parties and keeping in view the totality of the facts and circumstances of the case, a further sum of Rs. 15 lacs in addition to the aforesaid amount of Rs. 10 lacs be deposited as a condition precedent for hearing of the appeal by the Tribunal which would meet the ends of justice.

7. The petition stands disposed of accordingly. A prayer was made by the learned counsel for the petitioner to grant the time for pre-deposit. In the interest of justice, we allow the petitioner to deposit the amount of Rs. 15 lacs in addition to the amount already deposited, upto 15.7.2014. It is directed that if the petitioner in the present case deposits the amount of Rs. 15 lacs by 15.7.2014, the appeal shall be heard on merits by the Tribunal in accordance with law.