(2016) 10 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No. 37210 of 2016

Toshniwal Hyvac Pvt. Ltd. APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 25-10-2016

Acts Referred:

Citation : (2017) 347 ELT 261

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri R. Anishkumar for C. Saravanan, Advocates, for the Petitioner; Shri A.P. Srinivas, Senior Panel Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J.—Mr. A.P. Srinivas, learned Senior Panel Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has sought for twin reliefs in this writ petition namely to forbear the respondents from initiating any recovery proceedings against the petitioner pending disposal of the appeal before the Customs, Excise and Service Tax Appellate Tribunal in Appeal No. E/400/2008 and for a direction to the second respondent namely the Commissioner of Central Excise (Appeals) to re-transfer Appeal Nos. 292 and 293/2016 to the Call Book.

3. The reason for filing this writ petition has arisen on account of the fact that though the Tribunal had granted an order of interim stay in the first instance on 5-6-2012, the stay was for a period of six months or till the final disposal of the appeal, whichever is earlier and the appeal has not been disposed of within a period of six months. However, the fourth respondent sent a communication dated 5-1-2015 calling upon the petitioner to intimate as to whether any stay has been granted by the Tribunal in respect of the demand, which is crystallized in Order-in-Original No. 5 of 2007, dated 23-2-2007 and if the stay had not been

extended, the petitioner was directed to pay the amount quantified in the order.

4. This necessitated the petitioner to file a miscellaneous petition before the Tribunal seeking extension of stay. The Tribunal, by order dated 31-3-2015, extended the stay order granted on 30-9-2008 till 10-6-2015. Once again, the petitioner filed another miscellaneous petition for extension of interim order, as, by then, the appeal was not disposed of. The Tribunal considered the second miscellaneous petition and by order dated 12-8-2015, directed the stay order granted earlier to be extended for a further period of six months or till the final disposal of the appeal. It was further observed by the Tribunal that hearing of the appeal could not take place and that therefore, the stay has been extended for a period of six months.

5. In the meantime, for the subsequent period, Orders-in-Original were passed, as against which, the petitioner preferred two appeals in Appeal Nos. 292 and 293 of 2016 before second respondent. Since the issues were common in both the appeals and identical to the issues pending before the Tribunal, the Commissioner thought fit to transfer the appeals to the Call Book and await the decision of the Tribunal. Owing to this, the petitioner did not move the Tribunal for further extension of stay, which was granted on 12-8-2015.

6. However, the Commissioner (Appeals) directed the matters to be listed for hearing and notices in this regard were issued to the petitioner dated 29-7-2016 and 23-9-2016. Simultaneously, there is also a threat of recovery, since the order of stay granted by the Tribunal was only for a period of six months from 12-8-2015. Therefore, the petitioner is before this Court.

7. So far as the prayer for stay of recovery of Central Excise duty is concerned, since the Tribunal is already seized of the matter and the appeal is pending since 2008 and an order of stay has been in force from 2008 and periodically extended, this Court is of the view that pending disposal of the appeal, there cannot be any threat of recovery.

8. It is submitted that for sometime, due to want of quorum, the Tribunal did not have regular sittings and could not dispose of appeals and as of now, the Tribunal has got two Benches.

9. This Court is also informed that the appeals of the year 2007 are being heard. Since the appeal filed by the petitioner is of the year 2008, it may take sometime for the appeal to be disposed of by the Tribunal. Therefore, ends of justice would be met if an order of stay, granted by the Tribunal and extended from time to time and the last of such extension being 12-8-2015, is continued till the disposal of the appeal before the Tribunal. Accordingly, the respondents shall not initiate any action for recovery of excise duty, which is the subject matter of appeal before the Tribunal.

10. So far as the request made by the Tribunal to re transfer the appeals pending before the Commissioner (Appeals) in Appeal Nos. 292 and 293 of 2016 to the

Call Book, it appears that the petitioner has not made any such request to the Commissioner (Appeals). However, one fact, which has to be noted is that initially, the Commissioner thought fit to refer the matters to the Call Book, as the issue involved in the appeals is identical to the issue, which is the subject matter of consideration in the appeal filed before the Tribunal. But, for the reasons best known, now the Commissioner thought fit to list the appeals for hearing and it is pleaded that the appeals have now been adjourned at the request of the petitioner.

11. Therefore, insofar as the second limb of the prayer sought for, liberty is granted to the petitioner to file appropriate application before the second respondent - the Commissioner of Central Excise (Appeals-II), to re-transfer the appeals to the Call Book and if such an application is filed, the Commissioner shall take into consideration that the identical issue is pending before the Tribunal in the assessee''s own case and shall pass appropriate orders on merits and in accordance with law, within a period of three weeks from the date, on which, such application is filed.

12. With the above directions, the writ petition is disposed of. No costs.

