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(2011) 11 CHH CK 0015

In the Chhattisgarh High Court

Case No : Writ Petition T No 6025 of 2007

Uniworth Ltd APPELLANT

Vs

Commissioner of Central Excise Appeals Raipur and Others RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35, 35F
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2011) 11 CHH CK 0015

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon''ble Shri Satish K. Agnihotri, J.—Challenge in this petition is to the legality and validity of the order dated 09.05.2007 (Annexure P/1) passed by the Commissioner, Customs & Central Excise (Appeals - I) Raipur, {for short `the CCE(A)} in Appeal No. 41/CE/RPR/Appl.I/2007 and further, to restore the said appeal and hear the same without insisting on pre- deposit.

2. The CCE(A), by order dated 09.05.2007, dismissed the appeal No. 41/2007 which was preferred against the Order-in-Original No. 325-327/CH: 51/RPR/ ADC/06, dated 30.11.2006 passed by Additional Commissioner, Central Excise Hqrs. Raipur. The petitioner, vide interim order No.04/RPR-I/2007 dated 20.03.2007, was directed to pre-deposit an amount of Rs. 25 lacs on or before 12.04.2007. The appeal was directed to be listed on 25.04.2007, subject to compliance of the order dated 20.03.2007. The petitioner requested for extension of date of pre-deposit vide letter dated 10.04.2007. It appears that time was further extended until 12.04.2007. Till 25.04.2007, the petitioner failed to comply with the direction to deposit the amount of Rs. 25 lacs and further failed to appear on that date. Thus, the appeal was dismissed on account of failure to pre-deposit an amount of Rs. 25 lacs and failure to appear before the appellate authority for hearing.

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3. On perusal of the record, it appears that against the interim order No.04/RPR-I/2007 dated 20.03.2007, the petitioner preferred a petition before this Court on 11.05.2007 being W.P.(T) No.4897 of 2007 and no step was taken by the petitioner to get the said writ petition i.e. W.P.(T) No.4897 of 2007 listed and no interim order in respect of the stay of the order dated 20.03.2007 was granted by this Court.

4. The question involved herein is asto whether the CCE(A) was justified in dismissing the appeal for want of appearance and for want of pre-deposit of the amount required mandatorily.

5. The Additional Commissioner, Central Excise, disallowed Cenvat credit of Rs. 1,38,59,015/- wrongly availed by the petitioner and a penalty and interest of Rs. 25 lacs was imposed. The petitioner preferred an appeal under the provisions of section 35 of the Central Excise Act, 1944 (for short `the Act, 1944''). The CCE (A), hearing the application for interim relief, by order dated 20.03.2007 (Annexure P/12) directed the appellant to pre-deposit an amount of Rs. 25 lacs towards the disallowed Cenvat credit and consequent amounts payable u/s 35F of the Act, 1944. Initially, it was directed to deposit the amount on or before 12.04.2007, which it appears was extended and ultimately, till the date fixed for hearing on 25.04.2007. The petitioner, without pre-depositing the above stated amount, while seeking extension of time, stated that the petitioner has filed a writ petition before the High Court of Chhattisgarh, but no stay order was produced and further, it appears that the petitioner has not indicated the number of the writ petition in support of his contention before CCE (A) except the statement that he had filed a writ petition. It was further contended by the petitioner for exemption of pre- deposit that the petitioner was declared a sick unit by B.I.F.R. vide order dated 30.01.2006 and the company was facing acute financial crisis.

6. The CCE (A) relying on the decision of Metal Box India Ltd. v. C.C.E. Mumbai1 held that from payment of pre-deposit covered u/s 35F of the Act, 1944, the company does not get any protection u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. Accordingly, the appeal was dismissed for want of pre-deposit and for want of appearance also.

7. Section 35F of the Act, 1944 prescribes for deposit of the duty demanded or penalty levied when a person is desirous of appealing against such decision or order. However, proviso to section 35F of the Act, 1944 confers discretion to dispense with such deposit or reduce the amount of deposit if the CCE (A) or the Tribunal is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person. In the case on hand, having regard to the facts situation of the case, the Additional Commissioner, Central Excise, by order dated 30.11.2006, which was impugned before the appellate authority, disallowed the Cenvat credit amounting to Rs. 1,38,59,015/- and penalty of Rs. 25 lacs was also imposed.

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8. The Supreme Court, in Metal Box India Ltd.1, in identical facts of the case, held as under:

Section 22 of the Sick Industries Act, provides relief in regard to the proceedings which relate to (a) winding up of the industrial company; (b) execution, distress or the like against any of the properties of the industrial company, (c) the appointment of a receiver in respect thereof, and (d) proceeding in regard to suit for recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company. Payment of pre-deposit covered u/s 35F of the Central Excise Tax Act, 1944 does not fall under any of the above-mentioned categories in Section 22 of the Sick Industries Act.

9. The petitioner failed to produce any order passed in W.P. (T) No.4897 of 2007 filed by the petitioner challenging the interim order No.04/RPR-I/2007 dated 20.03.2007 of pre-deposit indicating that there was any stay, from this Court, of the order passed by the CCE (A) to pre-deposit the amount of Rs. 25 lacs. On perusal, it is found that W.P. (T) No.4897 of 2007 is still pending consideration without any interim order. It is well settled that unless the order impugned is stayed or modified by the superior authority/court, the order is binding upon the parties.

10. Having regard to the facts situation of the case, the quantum of the impugned direction to deposit an amount of Rs. 25 lacs, cannot be held as excessive or arbitrary. Further, the direction whereby the petitioner was directed to deposit an amount of Rs. 25 lacs is not under challenge in this petition. The impugned order passed by the appellate authority is just, proper and does not warrant any interference.

11. In view of the foregoing and for the reasons stated hereinabove, the writ petition is dismissed.

12. No order asto costs.

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