(2014) 01 AHC CK 0304

In the Allahabad High Court

Case No : Central Excise Appeal No. 28 of 2014

Vah Auto Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise and Service Tax RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35C, 35F
Finance Act, 1994 — Section 73

Citation : (2014) 302 ELT 549

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Dilip Gupta, J

Bench : Division Bench

Advocate : A.P. Mathur, Advocate for the Appellant; Ashok Sing, Sr. S.C, Advocate for the Respondent

Judgement

1. The appeal by the assessee arises from a judgment of the Customs, Excise & Service Tax Appellate Tribunal dated 26 February, 2013. The assessee has raised several questions of law of which the following formulation will be sufficient for the disposal of the appeal:--

Whether the Hon''ble Tribunal was justified in demanding Rs. One lac in compliance of Section 35F of the Central Excise Act, 1944 on the application pending before the Commissioner (Appeals) specially when the Commissioner (Appeals) had dispensed with the condition of pre-deposit prior to remand?

2. An order was passed by the Assistant Commissioner, Central Excise on 30 November, 2010 confirming a duty demand of Rs. 4,89,444/- u/s 73 of the Finance Act, 1994 together with a penalty of the like amount. During the pendency of the appeal before the Commissioner (Appeals), the requirement of pre-deposit was dispensed with. The Commissioner (Appeals) by an order dated 30 March, 2012 confirmed the demand. The Tribunal by its order dated 26 February, 2013 has remanded the proceedings back to the Commissioner (Appeals) but directed the appellant to deposit an amount of Rs. 1 lac to protect the interest of the revenue. The application filed for review of the said order was

rejected by the Tribunal on 15 July, 2013.

3. The contention of the appellant before the Tribunal was that all the documents for proving sale of goods were on record and there was no element of service involved. The Tribunal observed that the Finance Act, 1994 does not have, as its object, to tax commodities but observed that it was the failure of the appellant to provide details and evidence that resulted in its defence being rejected. The revenue conceded to an order of remand but prayed that the appellant should make some deposit as an interim measure to protect its interest. In this view of the matter, the Tribunal directed the appellant to deposit an amount of Rs. 1 lac to protect the interest of the revenue.

4. The principal submission which has been urged is that while remanding the proceedings, the Tribunal had no jurisdiction to issue any such direction for deposit of the amount.

5. We are not inclined to accept this submission which has been urged on behalf of the appellant.

6. Section 35C empowers the Appellate Tribunal after hearing the parties to the appeal to pass orders as it thinks fit confirming, modifying or annulling an order appealed against or to refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit. The directions which Section 35C contemplates that the Appellate Tribunal may issue while remanding the proceedings may in an appropriate case include an order that would protect the interest of the revenue, This is also the view which was taken by the Division Bench of the Punjab & Haryana High Court at Chandigarh in Shiv Sewa Sadan Vs. CESTAT, . Hence, as a matter of first principle, we are not inclined to accept the broad proposition which has been urged on behalf of the appellant.

7. However, in the facts of the present case we find that the appellant had an order of dispensation of pre-deposit of the amount in its favour during the pendency of the proceedings before the Commissioner (Appeals). The Tribunal found it appropriate to remand the proceedings back to the Commissioner (Appeals) for reconsideration. Save and except recording the submission of the revenue that a direction for deposit should be made, the Tribunal has not furnished any independent ground for modifying the position which obtained during the pendency of the proceedings before the Commissioner (Appeals). Hence, though the Tribunal undoubtedly did have the power u/s 35C to issue an appropriate direction while remanding the proceedings, no reason has been furnished by the Tribunal for ordering the deposit.

8. We may note that in all fairness, learned counsel for the appellant stated before the Court that the appellant would have no objection if the Commissioner (Appeals) reconsiders the entire issue relating to dispensation of the pre-deposit afresh before the appeal is heard. We find this request to be proper.

9. In the circumstances, we dispose of the appeal by modifying the order of the Tribunal to the extent it requires the appellant to make a deposit of Rs. 1 lac before the Commissioner (Appeals).

10. We direct that before the Commissioner (Appeals) decides the appeal on merits, he shall, in the first instance, determine as to whether any dispensation with the requirement of pre-deposit of the amount is made out to his satisfaction, having due regard to the provisions of law. The appeal is, accordingly, disposed of.

