

*** THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 29.07.2008

+ CEAC No. 3 of 2008

M/S SATVIK INDUSTRIES

..... Appellant

-versus-

**COMMISSIONER, CENTRAL
EXCISE, DELHI-II**

..... Respondent

Advocates who appeared in this case:

For the Appellant	:	Ms. Reema Jain with Mr. Abhinav Jain
For the Respondent	:	Mr. Sanjay Katyal with Mr. R K Jha

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not?
3. Whether the judgment should be reported in the Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The present appeal has been filed by the appellant being aggrieved by the order dated 31.01.2008 passed by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred as the tribunal). The appellant, being aggrieved by the order-in-original

passed by the Commissioner of Central Excise on 23.03.2007, had preferred an appeal (Appeal No. E/2968/2007) in respect of the penalty of Rs.1,06,01,497/- which had been imposed upon the appellant by the Commissioner. It is relevant to note that no duty as such was levied or a demand raised on the appellant by virtue of the said order-in-original. Apart from the present appellant, there were others also who had filed appeals in respect of the said order-in-original, before the tribunal. The appellant had also filed an application for waiver of pre-deposit. When the question of waiver of pre-deposit was being heard by the Tribunal, the Tribunal came to the conclusion that it would be a fit case to direct the Commissioner to pass fresh orders after giving an opportunity of hearing to the appellants including the petitioner on merits. This view had been formed by the Tribunal because the Tribunal was convinced by the arguments advanced by the appellant before it that no effective hearing had been provided to them by the Commissioner before the order-in-original had been passed. After coming to such a conclusion the Tribunal set aside the order-in-original passed by the Commissioner and disposed of all the appeals including that of the appellant. However, while disposing of the appeals, the Tribunal passed the following directions :-

“....., we are of the view that in the facts and circumstances of the case, M/s Satvik Industries should pay a sum of Rs. 30.00 lacs towards penalty imposed upon it as a condition of fresh hearing by the Commissioner.”

The Tribunal further directed :-

“Accordingly, we direct M/s Satvik Industries to deposit a sum of Rs.30.00 lacs within six weeks from today. On such deposit being made, the said appellant will be given fresh opportunity of hearing and fresh order on merit shall be passed by the Commissioner. It is made clear that if the amount is not paid within the aforesaid period, the appellant will forfeit the right of fresh hearing and adjudication and in that case the impugned order shall stand as regards the said appellant. After the deposit is made as above, the Commissioner shall pass order within four months.”

2. The appellant is aggrieved by the aforesaid directions of the Tribunal whereby the appellant is required to make a deposit of Rs. 30.00 lacs for a hearing to be granted by the Commissioner. The learned counsel for the appellant submitted that the provisions of Section 35F of the Central Excise Act, 1944 pertains to deposit for the purpose of hearing the appeal. In the present case, according to the learned counsel for appellant, there was no appeal pending before the Tribunal and therefore, no order directing deposit of Rs. 30.00 lacs towards penalty could have been passed by the Tribunal as a condition for hearing the appellant in the original proceedings.

He also submitted that before a direction with regard to the deposit could be made under the said provision, there must be some duty or penalty levied. Since the Tribunal had set aside the order-in-original, there was no duty or penalty levied against the appellant and, as such, the question of making a deposit of Rs. 30.00 lacs did not at all arise.

3. We have considered the submissions made by learned counsel for parties and are of the view that once the Tribunal had set aside and quashed the order-in-original on the ground of denial of natural justice, the Tribunal ought not to have imposed the condition of deposit of Rs. 30.00 lacs. This is so because, first of all, the order by which the penalty was imposed on the appellant itself stood set aside and there was no penalty leviable against the appellant after the setting aside of the said order-in-original. Apart from this, we cannot lose sight of the fact that the reason for setting aside of the order-in-original was that the petitioner had been denied an opportunity of hearing. In such circumstances, the Tribunal, in our view, ought not have to have imposed a condition for deposit of Rs.30.00 lacs which is clearly harsh and burdensome particularly, when what the appellant is seeking is an opportunity of hearing. The

impugned order is set aside to the extent that the appellant was required to make a deposit of Rs. 30.00 lacs. The remand order survives and the Commissioner shall hear the appellant as directed by the Tribunal, but without requiring the appellant to deposit a sum of Rs.30.00 lacs.

+CM no. 8365/2008 in CEAC No. 3 of 2008

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In view of above directions passed in the appeal, this application is disposed of as having become infructuous.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

July 29, 2008

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