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

+ CEAC 42/2012

RAJINDER GAUR

..... Petitioner

+ CEAC 43/2012

RP TRIPATHI

..... Petitioner

Through : Mr. Pankaj Bhatia and Ms. Mehak Khajiria, Advs.

VERSUS

COMMISSIONER CENTRAL EXCISE

..... Respondent

Through : Mr. Satish Kumar, sr. standing counsel with Mr. Chirag Bhatia,
Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

% **16.10.2012**

CM 17967/2012 in CEAC 42/2012

CM 17992/2012 in CEAC 43/2012

Exemption is allowed subject to all just exceptions.

Application is disposed of.

CEAC 42/2012 & CM 17966/2012

CEAC 43/2012 & CM 17991/2012

Issue notice.

2. Mr. Satish Kumar, sr. standing counsel accepts notice.

3. The petitioner is aggrieved against the order of the Customs, Excise &

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Service Tax Appellate Tribunal ('Tribunal', for short) and contend that the following substantial question of law arises i.e. *"whether the Tribunal fell into error in holding that the failure to deposit an amount directed automatically resulted in adverse condition as far as appellants are concerned, disentitling them to make their contentions on merits"*.

4. The facts of the case are that the main assessee M/s K P Pouches (P) Ltd. manufacturing gutkha and pan masala was issued a show cause notice. Adjudication resulted in final order in original dated 30.11.2009. The Tribunal directed M/s K P Pouches (P) Ltd. to deposit ₹ 5 crores and at the same time observed that in case this order was complied with and there was no need for the other appellants to make pre-deposit. M/s K P Pouches (P) Ltd. approached this Court in CEAC 9/2011, which was dismissed. It did not comply with the order. As a result the Tribunal observed as follows in order dated 3.4.2012 that since the direction has not been complied with, the appellant was guilty of wilful violation of Section 35F of the Central Excise Act, 1944.

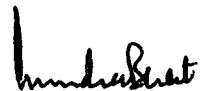
5. It is contended that the order of the Tribunal made in the case of M/s K P Pouches (P) Ltd. on 2.11.2011 nowhere mentions that in the event of default by the appellant, the present appellant and other aggrieved parties, would also be treated in the same fashion i.e. as defaulters. In the absence of any indication and even on the observation of merits of the appellants' case since he was directed to pay penalty to the tune of ₹ one crore, the automatic assumption of default in compliance with the previous direction, was erroneous and without application of mind.

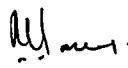
6. We have heard counsel for the parties. It is apparent from the order dated 2.11.2011 that the Tribunal essentially directed M/s K P Pouches (P) Ltd. to deposit ₹5 crores within 8 weeks. The present appellant request for waiver of the pre-deposit in respect of the amount directed to be paid by him. In these circumstances we find merit in the argument that without first dealing with the

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merits of the individual appellant's case for stay, the Tribunal ought not to have mechanically assumed default and dismissed the appeal. This Court in previous order dated 21.9.2012 in CEAC 34/2012 and the connected matters dealt with the case other than the present one i.e. Ravi Singhal, Supreme Road Transport Pvt. Ltd. and Supreme Trading Co. and observed that this approach of the Tribunal is indefensible. In these circumstances, the present appellant too has to succeed as in the case CEAC Nos.34/2012, 35/2012 and 36/2012 (disposed of by order dated 21.9.2012) for the same reasons. The Court sets aside the order of the Tribunal and directs to the present appellant for waiver of the pre-deposit, in regard to the application pending in this regard. The party is directed to appear before the Registrar on **31st October, 2012** for hearing of the application for stay in the appeal. The appeal is allowed in the above terms.

Order Dasti.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

OCTOBER 16, 2012
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