Case No :CMAppl(FA) 0000538/2014

Party Name : M/S SATYAPAL SHIVKUMAR Vs COMMISSIONER OF CENTRAL EXCISE, SHILLONG

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA THE HONBLE MR. JUSTICE S.C.DAS

On 10.12.2014 we had passed the following order:

"Issue notice, returnable for 21st January, 2015.

As Mr. S. Acharjee, learned standing counsel for the Excise Department waives service of notice on behalf of respondent, no formal notice need be issued.

Basically three issues arise in this petition. According to the petitioners, the exemption granted to them in terms of the Notification dated 21st January, 2004 is a conditional exemption and therefore, the proviso of the notification dated 17.10.2002 is not applicable to them because their product is not generally exempt from payment of excise.

The second issue raised by Dr. Saraf, learned senior counsel is that in earlier proceedings, the revenue itself has denied the benefit of exemption to the petitioner on the ground that the exempted amount has not been invested in terms of the notification of 2004. He therefore, submits that this itself makes it clear that according to the revenue, the exemption is not general in nature. It is also submitted that the revenue cannot blow hot and cold in the same breath. In the earlier petition it had claimed that the petitioner was not entitled to exemption, but now according to the revenue, the petitioner is entitled to 100% exemption and therefore, covered by the proviso to Notification of 17.10.2002.

Lastly, it is submitted by Dr. Saraf, learned senior counsel that in an identical situation, the same two members of the CESTAT have granted stay order without any conditional deposit on 26.07.2003 in Appeal No. E/690/2011.

At this stage, we are not going to the merits of the case, but prima facie, we are of the view that to be covered under the proviso of the Notification dated 17.10.2002, the product or unit as a matter of policy should be generally exempt from tax. The conditional exemption granted to the petitioner has been denied to the petitioner because of the fact that according to the revenue, the petitioner has not invested the benefits in social benefits schemes as per the notification. Therefore, this is not a total exemption at all. As such, we are prima facie of the view that this is not a total exemption. Hence, a prima facie case has been made out for grant of stay. The order dated 11.09.2014 for pre-deposit of 10% is accordingly, stayed.

List on 11th February, 2015."

We may point out that the Court is aware that in this reference the Court is dealing with matter in which the challenge is to the interim order passed by the CESTAT and therefore we are not going into the merits of the case. However, in the order quoted hereinabove we had raised three issues and we had expected that the revenue in its reply will deal with the three issues which were raised in the Court. We are sorry to say that not one of the issues has been even remotely answered in the reply. Most importantly, there is no reply to the third issue raised by us that in an identical situation the same two members of the CESTAT had granted stay order without any conditional deposit on 26.07.2013 in Appeal No.E/690/2011.

According to Mr. Dutta that they could not trace out the file on that issue.

In the order the date is wrongly mentioned as 26.07.2003 but the order is of 26.07.2013.

Equality is one of the golden rules which is part of a judicial proceedings. All proceedings must be treated equally and that is why we had asked for this clarification.

Dr. Saraf has shown to us the said order which has been reported in ***2014(300)E.L.T.285*** wherein stay order has been granted on similar situation.

In this view of the matter we confirm the stay order.

The CM Application is disposed of with the direction that the Tribunal will not insist for deposit of the amount and may hear the matter finally on 23.03.2015.