NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAX CASE NO. 49 OF 2010

Murari Lal Agrawal S/o Matadin Mukim, aged about 65 years, erstwhile Managing Director, M/s Bilaspur Casting Ltd. 2A, Ganesh Chandra Avenue, 2nd Floor, Kolkata (West Bengal)

... Appellant

Versus

1. Union of India, through Secretary, Ministry of Finance, Department of Revenue, having its registered office at North Block, New Delhi.

2. Commissioner, Customs & Central Excise, Central Excise Building, Tikrapara, Raipur (C.G.)

... Respondents

TAX CASE NO. 7 OF 2012

M/s Bilaspur Casting Ltd., through Shri Prafulla Kumar Parida, son of Late Shri R.P. Parida, aged about 65 years, Director, M/s Bilaspur Casting Ltd., 2A, Ganesh Chandra Avenue, 2nd Floor, Kolkata

... Appellant

Versus

1. Union of India, through Secretary, Ministry of Finance, Department of Revenue, having its registered office at North Block, New Delhi.

2. Commissioner, Customs & Central Excise, Central Excise Building, Tikrapara, Raipur (C.G.)

... Respondents

TAX CASE NO. 50 OF 2010

Jitendra Agrawal S/o Shri L.P. Agrawal, aged about 38 years, erstwhile Director, M/s Bilaspur Casting Ltd., 2A, Ganesh Chandra Avenue, 2nd Floor, Kolkata (West Bengal)

... Appellant

Versus

1. Union of India, through Secretary, Ministry of Finance, Department of Revenue, having its registered office at North Block, New Delhi.

2. Commissioner, Customs & Central Excise, Central Excise Building, Tikrapara, Raipur (C.G.)

... Respondents

For Appellants	:	Mr. Ashish Shrivastava, Advocate.
For Respondents	:	Mr. Maneesh Sharma, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgement on Board

Per NAVIN SINHA, C.J.

16/07/2015

1. These three Appeals arise from a common order dated 23.11.2007 passed by the Customs Excise & Service Tax Appellate Tribunal, New Delhi in Excise Appeals no. 2899, 2939 and 2958 of 2006. Since the three Appeals have been dismissed for non-compliance of the order declining waiver for pre-deposit of duty, and the questions arising for consideration are common, they have been heard together and are being disposed by a common order.

2. The Appellants' factory was visited on 20.12.1995. Discrepancy was found on between the physical stock in comparison of RG-1 register. Show cause notice was issued on 14.10.1997 with regard to shortage in respect of steel ingots and cast articles of iron and steel, runner, risers and unmachined manganese steel castings, alleging that they were removed without payment of Central Excise Duty. Reply to the show cause notice was filed on 27.9.2000. The Commissioner of Central Excise on 30.3.2006 confirmed the demand for Rs.85,96,256/- and also for Rs.41,958/- with penalty. Separate Appeals were preferred on behalf of the Company and its Managing Director. In the first application for waiver of pre-deposit, the Tribunal on 19.4.2007 directed deposit of duty waiving pre-deposit of penalty. On 27.6.2007, another application was filed for modification of the order dated 19.4.2007, which was rejected on 5.10.2007 observing that there had been no change in circumstances since the previous order dated 19.4.2007 warranting reconsideration. Notwithstanding the same, a fresh application for modification of the order with regard to pre-deposit was made on 21.11.2007, after which the Appeal itself was dismissed by the impugned order for non-compliance of the order with regard to pre-deposit of duty.

3. Learned Counsel for the Appellant submits that undue hardship pleaded before the Tribunal at the stage of consideration for waiver of pre-deposit of duty has not been considered properly. The Company had been declared sick and was under the BIFR, an aspect which has not been considered properly. The fact was brought to the attention of the Tribunal in the last application for modification dated 21.11.2007. The Company is in difficulty as it is closed and and is unable to deposit the duty as directed.

4. Shri Sharma, appearing on behalf of the Respondents, submits that the Appellants have successfully evaded the payments since 30.3.2006 by filing repeated applications for modification. It does not appear that the issue with regard to the Company being sick and under BIFR was brought to the attention of the Tribunal when the orders dated 19.4.2007 and 5.10.2007 were passed. There is no pleading in the memo of Appeal that the question though raised has not been considered. Without prejudice to the same, he further submits that relying on 2003 (155) E.L.T. 13 (S.C.) (Metal Box India Ltd. v. Commissioner of Central Excise, Mumbai) that the Company being under BIFR was not a relevant consideration with regard to waiver of pre-deposit of duty under Section 35F of the Central Excise Act.

5. We have considered the submissions on behalf of the parties.

6. Apart from the observations in Metal Box India Ltd. (supra), directly relevant to the present controversy, we are not inclined to entertain these Appeals to assail the order of the Tribunal on a ground which does not appear to have been raised before the Tribunal, to test the correctness of the order of the Tribunal. There is no statutory provisions for filing modification applications under Section 35F. None the less the Tribunal did consider it and came to the conclusion that there was no change in circumstances to warrant reconsideration of its original order.

7. We are not satisfied in the facts and circumstances of the present case including the fact that the liability was determined as far back as 30.3.2006 and waiver of pre-deposit of penalty was directed as far back as 19.4.2007, to entertain the present Appeals.

8. The Appeals are dismissed.

Sd/-	Sd/-
(Navin Sinha)	**(P. Sam Koshy)**
Chief Justice	**Judge**

/sharad/