NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No.9 of 2015

Sri Kailash Agrawal, Proprietor M/s Kailash Traders, Mittal Complex, Ganjpara, Raipur (C.G.)

---- Appellant

Versus

The Commissioner, Central Excise & Customs, Raipur Commissionerate, Central Excise Building, Dhamtari Road, Tikrapara, Raipur – 492 001, Chhattisgarh

---- Respondent

For Appellant	:	Shri Dharmesh Shrivastava, Advocate
For Respondent	:	Shri Maneesh Sharma, Advocate

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.

Judgment On Board

Per NAVIN SINHA, C.J.

16/7/2015

1. The Appellant is aggrieved by order dated 29.9.2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”) dismissing its appeal for non-compliance with regard to pre-deposit under Section 35F of the Central Excise Act, 1944 ordered on 22.1.2014 requiring it to deposit a sum of Rs. 1,00,000/- within six weeks.

2. Learned Counsel for the Appellant makes two fold submission. The first submission is that the undue hardship pleaded in paragraphs 6 and 7 of the stay application has not been considered properly before passing the order dated 22.1.2014. The Tribunal has simply accepted the contention of the Revenue that the Company was cash rich. Learned Counsel also relies upon an order in Tax Case No. 54 of 2014, dated 25.2.2015 with regard to the same Appellant. The next submission is that the Appellant has been held liable in its capacity as a Commission Agent while by another order dated 27.12.2013 in E/Stay/60414 to 60417-EX[SM] E/59710 to 59713/2013 and 10.9.2013 in E/Stay/56674, 56912, 56975/2013 in Appeal No. E/56235, 56433, 56501/2013-Ex, it has been granted complete waiver of pre-deposit for the same reason. Both these orders have not been considered while passing order dated 22.1.2014.

3. Learned Counsel for the Respondent submits that it does not appear from the pleadings of the Appellant that the attention of the Tribunal was invited to the orders dated 27.12.2013 and 10.9.2013. He next submits that the question of undue hardship has been properly considered in order dated 22.1.2014.

4. We have considered the submissions and are of the opinion that if the Appellant was a Commission Agent and for that reason it had been granted complete waiver of pre-deposit on similar allegations, there had to be some justification for differential treatment in the order dated 22.1.2014. This was a fundamental aspect for justice not only to be done but also to appear to have been done.

5. We therefore set aside the orders dated 22.1.2014 and 29.9.2014. The matter is remanded to the Tribunal for consideration both on the issue of undue hardship pleaded and also the aspect for complete waiver of pre-deposit granted to it in similar circumstances considering its status as a Commission Agent

6. The appeal is allowed.

Sd/-
(Navin Sinha)

CHIEF JUSTICE

Sd/-
(P. Sam Koshy)

JUDGE

Subbu