IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.01.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

C.M.A. NO. 102 OF 2015
AND
M.P. NOS. 1 & 2 OF 2015

M/s. Vectra Advanced Engineering
Pvt. Ltd., Vectra House, 5th Floor
No.15, 1st Main Road, Gandhi Nagar
Bangalore 560 009,
rep. By its Authorised Signatory
Mr.Ashok Kumar .. Appellant

- Vs -

Commissioner of Central Excise
Chennai III Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034. .. Respondent

Appeal filed under Section 35-G of the Central Excise Act against the Misc. order No.42061/2014 in Application No.E/S/65/2011 dated 26.11.14, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai, made in Appeal No.E/105/2011-DB.

For Appellant : Mr.Satish Parasaran

For Respondent : Ms.Mallika Srinivasan



JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

The present appeal is filed against the Miscellaneous order passed by the Tribunal ordering pre-deposit of the entire amount demanded, while ordering waiver of penalty and interest on the ground that the appellant had not appeared before it at the time of hearing. Aggrieved against the said order, the present appeal has been filed.

2. The appellant is engaged in the business of providing spare parts for specialised motor vehicles. Initially the business was being run as a division of M/s.Tatra Vectra Motors Ltd. and was subsequently transferred to the appellant through a business transfer agreement dated 5.8.08. In connection with the business, the appellant imported and locally procured spare parts. Notices were issued on the appellant calling upon it to show cause as to why the activities of the spare parts division not be considered as 'manufacture' within the meaning of Section 2 (f) (iii) of the Central Excise Act and various amounts, as shown in the show cause notices, should not be demanded along with interest and penalty. After replies and hearings, an order came to be passed on 29.6.09 confirming the demands raised in the show cause notices together with interest under Section 11AB and equivalent penalty under Section 11AC of the Central Excise Act and further penalty of Rs.1 Crore under Rule 25 of the Central Excise Rules, 2002. Aggrieved by the said order, the appellant filed appeal before the Tribunal.

3.. The Tribunal, by order dated 16.11.09, disposed of the main appeal itself by remanding the matter back to the Commissioner for fresh decision on merits. In the meantime, another show cause notice was also issued for the subsequent period on identical allegations. After hearing the matter, the respondent, vide order dated 29.10.10, confirmed the earlier order. Aggrieved by the said order, the appellant once again moved appeal before the Tribunal along with an application for stay of operation of the order of the respondent and for waiver of pre-deposit.

4. The Tribunal, by Misc. Order No.42061/2014, dated 26.11.14, while waiving the penalty and interest component, directed the appellant to pre-deposit the amount demanded. Aggrieved by the said portion of the order, the appellant is before this Court by filing the present appeal.

5. The grievance of the appellant is that after filing the appeal challenging the adjudication order, application was filed for early hearing, which was allowed by the Tribunal on 24.6.14 and the Miscellaneous Application was posted for hearing on 18.8.14. The Tribunal, in its order, has recorded that on 18.8.14, the Bench of the Tribunal did not sit and, therefore, the matter was posted for hearing on 26.11.2014. The Tribunal has further recorded that on 26.11.2014, when the matter was taken up, nobody appeared on behalf of the applicant/the present appellant and, therefore, it was not interested in proceeding with the stay petition. As a consequence, the entire amount was ordered to be deposited. This finding is sought to be dispelled by the appellant stating that the intimation of the next date of hearing was not received by the appellant and, therefore, they were not in a position to appear on that date.

6. In para-18 of the affidavit filed in support of this appeal, the appellant has clearly spelt out the reason for non-appearance before the Tribunal on the date of hearing. It is clearly mentioned that due to want of intimation, the appellant was not in a position to appear before the Tribunal.

7. Ms.Mallika Srinivasan, learned counsel appeared on behalf of the respondent and concurred with the statement of the appellant that the Tribunal had passed the order only on account of non-appearance of the appellant. Learned counsel for the respondent is unable to point out any material to show that intimation as to the next date of hearing was intimated to the appellant. However, learned counsel for the respondent submitted that if the Court so desires, it may give an opportunity to the appellant to present its case before the Tribunal by fixing a date for the Tribunal to take up the matter, by remanding the matter back to the Tribunal.

8. Heard Mr.Satish Parasaran, learned counsel appearing for the appellant and Ms.Mallika Srinivasan, learned counsel appearing for the respondent and perused the materials available on record.

9. It is evident from the materials available on record that this is a case where the demand is more than Rs.6 Crores, and it is evident from the record that the appellant, has been sincere and diligent in pursuing the appeal. The said fact is fortified by the action of the appellant in filing an application for early hearing of the appeal and this action of the appellant only shows his bona fides in prosecuting the appeal as well as the miscellaneous application. The Tribunal has merely ordered pre-deposit of the entire amount of Rs.6 Crores without taking into account any one of the plea as made by the appellant in the application for waiver of pre-deposit. As pleaded by the learned counsel for the appellant, the Tribunal has neither gone into the merits of the case nor considered the undue hardship of the appellant. That apart, the main plea of the appellant that the activity carried out by them could not be said to be manufacture within the meaning of Section 2 (f) (iii) of the Act has not at all be considered by the Tribunal. To that extent, this Court is of the considered opinion that the appellant's plea of prejudice deserves to be accepted.

10. For the reasons stated above, the order under challenge is set aside and this appeal is disposed of and the Tribunal is requested to re-hear the miscellaneous application for stay and waiver of pre-deposit during the 2nd week of February, 2015. Consequently, connected miscellaneous petitions are closed. However,

in the circumstances, there will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. Commissioner of Central Excise
   Chennai III Commissionerate, 26/1, Mahatma Gandhi Road
   Nungambakkam, Chennai 600 034.

2. Customs, Excise & Service
   Tax Appellate Tribunal, South Zonal Bench, Chennai.

1 cc to Mr.Satish Parasaran ,Advocate, SR.No.4179

C.M.A. NO. 102 OF 2015

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