IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 12 of 2015 (O&M)

Date of Decision: 26.8.2015

M/s Gilco Steels Ltd., Singan, Una

....Appellant.

Versus

Commissioner of Central Excise Chandigarh-I

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Jagmohan Bansal, Advocate for the appellant.

Mr. Sunish Bindlish, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 26.11.2014 (Annexure A-3) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal"), claiming the following substantial questions of law:-

a) Whether in the light of amended Section 35F order to deposit ₹ 45 lac is justified and sustainable?

b) Whether order passed by the Ld. Tribunal is perverse and contrary to facts and circumstances of the case?

c) Whether the order is perverse when the

Appellant has strong *prima facie* case on merits and financial grounds?

d) Whether grave and palpable injustice would be caused to the Appellant if the Respondents are permitted to execute the legal order?

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. The assessee is engaged in the business of manufacture of black and Galvanize pipes/tubes and electrical poles. The Central Government declared area based exemption scheme vide notification dated 10.6.2003 and the unit situated in specified area in the State of Himachal Pradesh was granted exemption from payment of central excise duty for a period of ten years. In the year 2009-10, the assessee installed a new manufacturing unit at District Una, Himachal Pradesh. On 6.4.2010, the officers of the Central Excise (Prevention) visited the unit of the appellant and recorded the statement of Shri Surinder Gill, Managing Director. The respondent issued a show cause notice dated 5.5.2011 to the appellant denying the benefit of exemption notification on the ground that it had failed to commence commercial production till 31.3.2010. The respondent vide order dated 13.9.2011 confirmed the demand of ₹ 1,19,19,854/- which the appellant challenged before the Tribunal in the year 2011. The Tribunal directed the appellant to deposit a sum of ₹ 75 lacs as pre-deposit. The respondent issued another show cause notice dated 7.3.2012 denying benefit of exemption notification and demanded duty of ₹ 89,75,035/- for the period February 2011 to December 2011. Thereafter, the respondent issued third show cause notice dated 4.2.2013 denying benefit of exemption notification by demanding duty to

the tune of ₹ 1,98,30,469/- for the period January 2012 to October 2012. This Court vide order dated 2.4.2013 set aside the order passed by the Tribunal and directed to hear the appeal on merits. The appellant filed replies dated 7.12.2013 and 9.12.2013, respectively to the said show cause notices. The adjudicating authority vide order dated 17.2.2014 (Annexure A-1) extended benefit of cenvat credit of ₹ 89,75,035/- and ₹ 1,01,67,620/- and confirmed the demand of ₹ 96,62,849/-. The appellant challenged the order, Annexure A-1, before the Tribunal by way of appeal on 10.5.2014 (Annexure A-2). Along with the said appeal, the appellant filed stay application. The Tribunal vide order dated 26.11.2014 (Annexure A-3) directed the appellant to deposit ₹ 45 lacs as a condition precedent for hearing of the appeal. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the liability has been illegally fastened on the appellant. It was urged that the requirement of ₹ 45 lacs as a pre-deposit as directed by the Tribunal was unfair and excessive under the circumstances.

4. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the amount as directed by the Tribunal was reasonable and justified.

5. The primary dispute that arises for consideration in this appeal relates to the quantum of pre-deposit to be made by the appellant as a condition precedent for the hearing of the appeal. This Court on 21.2.2015 while issuing notice of motion had directed the appellant to deposit ₹ 10 lacs within one month from that date. We are informed that the amount has since been deposited by the appellant. After hearing learned counsel for the parties and keeping in view the totality of the

facts and circumstances of the case, in our opinion, a further sum of ₹ 10 lacs on account of duty be deposited as a condition precedent for hearing of the appeal to meet the ends of justice.

6. The appeal stands disposed of accordingly.

7. A prayer was made by the learned counsel for the appellant to extend the time for pre-deposit of additional amount of ₹ 10 lacs. In the interest of justice, we allow the appellant to deposit the sum of ₹ 10 lacs as ordered today upto 31.10.2015. It is directed that if the appellant in the present case deposits the amount of ₹ 10 lacs in terms of the above order by 31.10.2015, the appeal shall be heard on merits in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

August 26, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**