

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CEA-23-2015 (O&M)

Date of decision:- 07.08.2015

M/s HR Enterprises/M/s HVR Industries Pvt. Ltd.

...Appellant

Versus

Commissioner of Central Excise, Rohtak and another

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Prabhat Kumar, Advocate,
for the appellant.

Mr. Sukhdev Sharma, Advocate,
for the respondents.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal against the order of the CESTAT dated 16.03.2015 directing the appellant to deposit an amount of ₹ 1.50 crores as a condition precedent to the maintainability of the appeal.

2. The appeal is admitted on the following substantial questions of law:-

(i) Whether the Tribunal is justified in not considering even the prima facie merit of the case at the time of deciding the application for waiver of pre-deposit?

(ii) Whether the learned Tribunal is justified in not considering the acute financial hardship mentioned in the application in terms of Section 35F of the Central Excise Act, 1944?

(iii) Whether the Tribunal was justified in coming to the conclusion that some amount is due and would be payable without recording any prima-facie finding in support thereof?

3. The Tribunal has expressly recorded that there was a breach of the principles of natural justice inasmuch as the documents on the basis of

which the duty had been quantified had not been supplied to the appellant and that the appellant had not even been permitted to cross-examine the customers whose statements had been relied upon. The Tribunal, however, observed that though there appears to be a violation of the principles of natural justice, there would still be some duty demand which ultimately would be confirmed against the assessee. The order does not disclose even a prima-facie finding on the basis of which such a conclusion was arrived at. To come to such a conclusion, there ought to be at least some prima-facie finding. This is especially in view of the fact that the Tribunal has found that there was a complete violation of the principles of natural justice.

4. Further, the Tribunal has not even considered the issue of financial hardship which was specifically raised by the appellant in the application for exemption from depositing any amount as a condition precedent to the maintainability of the appeal. The application for exemption had expressly averred that the profit of only about ₹ 5 lacs had been made by the appellant and that the appellant had a liability of more than ₹ 2 crores. There was no affidavit in reply. The issue ought to have been considered by the Tribunal.

5. The substantial questions of law are, therefore, decided in favour of the appellant.

6. In these circumstances, the impugned order is quashed and set aside. The matter is, however, remanded for a fresh consideration on the application for waiver of the pre-deposit.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

07.08.2015

Amodh