

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 32 of 2015 (O&M)

Date of Decision: 14.9.2015

Commissioner, Central Excise and Service Tax Commissionerate,
Chandigarh-II

....Appellant

Versus

M/s Cadchem Laboratories Limited, Jaula Khurd, Derabassi, Mohali

...Respondent.

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

PRESENT: Mr. Sukhdev Sharma, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 against the order dated 25.8.2014 (Annexure A-2) 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:-

- i) Whether the Hon'ble Tribunal is justified in taking a contrary view on the same issue for subsequent periods pertaining to the same Respondent by placing reliance on a Hon'ble Apex Court Judgment, which has earlier been duly discussed & distinguished by Hon'ble

Tribunal in its final decision while deciding the same Respondent's case for earlier periods?

- ii) Whether the Hon'ble Tribunal is justified in granting stay under the circumstances discussed above when the same issue has been decided by the Hon'ble Tribunal after due deliberations in favour of the Revenue?
- iii) Whether unconditional stay can be granted on an application for waiver of pre-deposit merely on the basis of an observation regarding a prima facie case without considering anything else especially the condition of safeguarding the interest of the revenue?

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. The assessee is engaged in the manufacture of bulk drugs, i.e. Niacin, Clopidogrel Bisulphate, Etodolac, Aceclofenac and Niacin feed premix and is availing cenvat credit on inputs as well as capital goods. The assessee claimed exemption from payment of duty under the notification dated 23.7.1996 on the excisable goods viz. Niachin manufactured by it and consumed captively in the manufacture of Niacin Feed Premix. Three show cause notices dated 13.8.2012, 23.4.2012 and 15.7.2013 were issued to the assessee for different periods by raising demand of ₹ 1,54,01,123/-. The adjudicating authority vide order dated 6.9.2013 (Annexure A-1) confirmed the said demand along with interest and imposed penalty of equal amount. Feeling aggrieved, the assessee filed an appeal along with stay application before the Tribunal. The Tribunal vide order dated

25.8.2014 (Annexure A-2) allowed the stay application by dispensing with the condition of pre-deposit of dues. Hence, the present appeal.

3. Learned counsel for the revenue submitted that the Tribunal has granted unconditional stay without safeguarding the interest of the revenue. It was further submitted that the Tribunal has taken a contrary view on the same issue for subsequent years pertaining to the case of the assessee.

4. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

5. The Tribunal while dispensing with the condition of pre-deposit of dues and allowing unconditional stay had recorded as under:-

“3. At this prima facie stage, we find that the issue is covered by the Larger Bench's decision in the case of Tetragon Chemie (P) Ltd. vs. CCE, Bangalore reported in 2001 (138) ELT 144 (Tribunal-LB) upheld by the Hon'ble Supreme Court in the case of CCE, Bangalore vs. Tetragon (P) Ltd. reported in 2001 (132) ELT 525 (SC). We also take note of the other identical decision of the Tribunal and are of the view that the Appellant has good prima facie case on merit.

4. Accordingly, we dispense with the condition of pre-deposit of dues and allow the stay petition unconditionally.”

6. The Tribunal held that the assessee has good prima facie case on merit and accordingly granted unconditional stay on an application filed by the assessee for waiver of pre-deposit.

7. In view of the above, there is no merit in the instant appeal

and the same is hereby dismissed. However, the Tribunal is directed to dispose of the appeal expeditiously in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

September 14, 2015
gbs

(RAMENDRA JAIN)
JUDGE