IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 89 of 2014
Date of Decision: 5.1.2015

M/s S.K. Rasps & Files Pvt. Ltd. ... Appellant

Versus

Commissioner of Central Excise,
Chandigarh-I & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B.S. WALIA

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

Mr. Sunish Bindlish, Advocate,
for the respondents.

RAJIVE BHALLA, J.

The appellant prays for quashing of order dated 6.12.2012 (Annexure A-5), passed by the Commissioner (Appeals) Customs and Central Excise, Chandigarh-I, directing the appellant to deposit Rs.26,20,150/- as duty and Rs. 10.00 lacs as penalty, as a pre condition to the hearing of the appeal. The appellant also challenges order dated 9.9.2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, dismissing its appeal.

Counsel for the appellant submits that the appellant invested more than Rs.20.00 crores to set up a furnace and a rolling mill in District Una, Himachal Pradesh, to claim benefit of area based exemptions. The appellant has been denied the benefit of exemptions on the ground that he could not commence production by 31.3.2010 and as a consequence, a claim for duty, penalty and interest was raised. The appellant filed an appeal, but vide the impugned order, the Commissioner (Appeals) directed the appellant to pay the entire amount of duty and almost the entire amount of penalty as a pre-condition to the hearing of the appeal. The order is not only onerous but in essence takes away the right of the appellant to seek adjudication of its grievance, namely, that facts relied in the original order are incorrect as the appellant commenced production before 31.3.2010. Counsel for the appellant submits that the appellant has deposited Rs.10.00 lacs, as directed by this Court on 10.12.2014.

Counsel for the revenue, on the other hand, submits that a perusal of the record reveals that the appeal is devoid of any merit. As per the record, machinery essential for commercial production, was received on 31.3.2010 and the electricity connection was obtained on 31.3.2010 at 10.50 P.M. thereby putting paid to any pretense on the part of the appellant that it commenced production before 31.3.2010. The Commissioner as well as the Tribunal have, therefore, rightly directed the appellant to deposit Rs.26,20,150/- towards duty and Rs.10.00 lacs towards penalty.

We have heard counsel for the parties and perused the impugned orders.

The Commissioner (Appeals) is empowered, as a pre condition to the hearing of the appeal to call upon an appellant to pre deposit such an amount as may be deemed appropriate. The Commissioner (Appeals) has directed the appellant to deposit Rs.26.00 lacs as duty i.e. the entire amount of duty claimed by the department and Rs.10.00 lacs as penalty out of the total penalty of Rs.26.00 lacs, while staying interest. The Tribunal has affirmed this order by primarily recording that the appellant was not able to commence production by 31.3.2010 and, therefore, the order passed by the Commissioner(Appeals) does not call for interference. We shall not record any final opinion on merits but would reiterate that the appellant did raise arguable points relating to commencement of production on or before 31.3.2010. It would also be necessary to reiterate that once an appeal is admitted for adjudication the application for stay should not be decided by imposing such conditions as are onerous or penal or tend to negate the statutory right of an appeal. The condition of pre deposit is meant to secure the interest of the revenue and not to punish an assessee. The appellant has admittedly deposited Rs.10.00 lacs as directed vide order dated 10.12.2014. We are satisfied that the interest of the reveune would be suitably saved if the appellant is directed to deposit another sum of Rs.5.00 lacs.

Consequently, without expressing any further opinion on the merits of the controversy, the appellant is directed to deposit another sum of Rs.5.00 lacs before the date of appearance. Upon deposit of Rs. 5.00 lacs, recovery of the balance amount of duty, penalty and interest shall remain stayed. The appeal shall be decided within two months on the parties putting in appearance before the Commissioner (Appeals) on 4.2.2015.

Disposed of accordingly.

(**RAJIVE BHALLA)**
JUDGE

5.1.2015 **(B.S. WALIA)**
monika **JUDGE**