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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: March 25, 2015

+ CEAC. 13/2015

DALMIA BHARAT SUGAR AND INDUSTRIES LTD.

..... Petitioner

Through: Mr. Prashant Shukla, Adv.

versus

COMMISSIONER CENTRAL EXCISE AND SERVICE TAX,
LTU, NEW DELHI

..... Respondent

Through: Mr. Satish Kumar, Sr. Standing
counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Admit.

2. Issue notice. Mr. Satish Kumar, Advocate accepts notice on behalf of respondent.

3. The question of law urged by the appellant is:

“Whether in the instant case the direction of the CESTAT to deposit ₹5 crores as pre-condition for the hearing of the appeal was justified.”

4. The Appellant's composite manufacturing unit is having interdependent and integrated plants for manufacturing sugar and alcohol. The Appellant is manufacturing sugar and molasses from sugarcane. The

assessee sought the benefit of notification No.3/2005 in respect of Rectified Spirit (RS), Absolute Alcohol (AA) Extra Neutral Alcohol (ENA), all conforming to the alcohol volume in excess of 95%. The Excise authorities issue a Show Cause Notice (SCN), *inter alia*, contending that the exemption is inapplicable and also stated that the cenvat credit cannot be claimed by the assessee. The appellant's replies to the SCN and its adjudication culminated in an adverse order. It appealed to the CESTAT which by the impugned order imposed an obligation to deposit ₹5 crores as pre-condition for hearing.

5. The assessee relied upon recent order of the Bombay High Court reported as *Niphad Sakhar Karkhana Ltd. vs. CEE*, 2014 (300) E.L.T. 66 (Bom.). The Court on that occasion observed as follows:

"In view of the above, we set aside the impugned order and direct the Tribunal to decide the stay application afresh. However, while considering the stay application both the decisions of the Tribunal in the matter of Ugar Sugar Works Ltd. referred to herein above would be considered to take a prima facie view whether the same is applicable to the facts of the present case before directing the amount of pre-deposit required to be made by the appellant for the purpose of entertaining its appeal on merits. All contentions of both parties are left open to be urged before the Tribunal. The appeal is disposed of with the above directions."

6. Learned counsel for the Revenue contends that the case is distinguishable on facts and relies upon the Order-in-Original to say that relevant chapter headings having been mentioned in the exemption notification dated 01.03.2005 whereas on the other hand it is contended that heading 2207 in addition to " ethyl alcohol and other spirits, denatured of

any strength", also covers "un-denatured ethyl alcohol of an alcohol strength by volume of 80% vol. or higher. It is then contended that since there is no mention of products which the assessee is concerned with and therefore it is not entitled to the credits claimed since the goods are not excisable. Prima facie, it appears that revenue's argument is at loggerheads with the notification. As noticed by the Bombay High Court in its ruling in *Niphad Sakhar* (supra) , all the tariff entries w.e.f. 01.03.2005 and the consequent exemption notification have resulted in a different regime. Even otherwise the submission made by the revenue to the effect might be startling, consequent prima facie on the logic which appeals to the Bombay High Court comment for acceptance of this Court. As a result the impugned direction to deposit ₹5 crores is hereby set aside. The assessee's appeal shall be heard on merits and disposed of in accordance with law.

7. The appeal is consequently allowed in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MARCH 25, 2015

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