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

\+ **C.E.A.C. No.1/2011, 2/2011 AND 3/2011**

% **Date of Decision: 22.03.2011**

C.E.A.C. No.1/2011

Shri Rakesh Kumar Garg …. Appellant
Through: Mr.Chandra Shekhar and Mr.Saurabh Upadhyay, Advocates

Versus

Commissioner of Central Excise Delhi – I …. Respondent
Through: Mr.Satish Kumar, Sr. Standing Counsel.

AND

C.E.A.C. No.2/2011

Shri Santosh Kumar Garg …. Appellant
Through: Mr.Chandra Shekhar and Mr.Saurabh Upadhyay, Advocates

Versus

Commissioner of Central Excise Delhi – I …. Respondent
Through: Mr.Satish Kumar, Sr. Standing Counsel.

AND

C.E.A.C. No.3/2011

Shri Devi Dass Garg .... Appellant

Through: Mr.Chandra Shekhar and Mr.Saurabh Upadhyay, Advocates

Versus

Commissioner of Central Excise Delhi – I .... Respondent

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

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1.	Whether reporters of Local papers may be allowed to see the judgment?	No
2.	To be referred to the reporter or not?	No
3.	Whether the judgment should be reported in the Digest?	No

A.K. SIKRI, J. (ORAL)
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C.M. Appl. No.5377/2011 in C.E.A.C. No.1/2011
C.M. Appl. No.5364/2011 in C.E.A.C. No.2/2011
C.M. Appl. No.5379/2011 in C.E.A.C. No.3/2011

Allowed, subject to all just exceptions.

The applications are disposed of.

C.M. Appl. No.5376/2011 in C.E.A.C. No.1/2011
C.M. Appl. No.5363/2011 in C.E.A.C. No.2/2011
C.M. Appl. No.5378/2011 in C.E.A.C. No.3/2011

The appellants have filed these appeals against the order of CESTAT challenging the imposition of penalty. As per the orders of the

CESTAT, penalty in the sum of Rs.5.00 crores is to be paid in each of these appeals. Out of these, a sum of Rs.2.00 crores each already stands paid, which was deposited by the appellants at the time of hearing of the appellants before the CESTAT. Along with these appeals, the appellants had moved applications for stay, which were dismissed by the orders dated 13th January, 2011 inter alia observing that the appellants were in robust financial health and therefore there was no reason to grant stay. The appellants were given time to deposit the balance amount of penalty within four weeks and this deposit was made subject to the outcome of these appeals. Appeals are now coming for hearing, after show cause notice, on 12th May, 2011. The appellants have challenged the aforesaid interim order by filing SLPs, which stand dismissed by the Supreme Court. In these applications, appellants are seeking limited prayer. It is submitted that time of four weeks granted by this Court to deposit the amount be extended. Prayer made is that appellants be permitted to deposit the amount of Rs.3.00 crores in 10 monthly installments of Rs.30.00 lakhs each. The appellants have stated that no doubt the appellants are solvent in the sense that they have lots of immovable properties but at the same time insofar as liquidity is concerned, the appellants have suffered huge losses leading to cash crunch and are unable to make payment of penalty in lump sum within the time granted by this Court.

It is also stated in the applications that for showing their bonafides, members of the appellants' family are agreeable to give security of the property standing in the name of M/s.Narsi Solvex (P) Ltd. having its registered office at 1918, Dimpir Nagar, Mathura, (U.P.). The Directors of the said company are brother and sister of the appellant and who are also appellants in these appeals. The details of property are mentioned in paragraph 7 of the application, which is a land admeasuring 2.5625 acres and freehold land.

Learned counsel for the respondent opposes the prayer made in these applications. He has raised twin submissions in this behalf, namely, (i) four weeks' time granted to the appellants expired long ago and applications are filed at a belated stage when the appeals themselves are coming up for hearing on 12th May, 2011; (ii) after the orders were passed declining the stay and said order is confirmed by the Supreme Court dismissing the special leave petitions, there is no reason to vary the same.

Insofar as the first objection of learned counsel for the respondent is concerned, from the facts stipulated above, it is obvious that the appellants had not accepted the order dated 13th January, 2011 as they had preferred special leave petitions against that order. No doubt, special leave petitions have been dismissed, but at the same time, there is no reason to file these applications earlier in view of the filing of the said SLPs and pendency thereof. Therefore, we do not find any force in the submission of the learned counsel for the respondent in challenging the filing of the application on the ground of delay.

Insofar as second objection is concerned, it should be borne in mind that this Court is not modifying the order for reduction in the amount of penalty to be paid by the appellants. That order remains intact. Effect thereof is that the appellants have to comply with the order dated 13th January, 2011 vide which they were asked to deposit the entire balance amount of penalty. The only concession which the appellants are seeking is to deposit this amount in installments. We are of the view that cogent reasons are given by the appellants for extension of time and to deposit the amount in installments. Needless to mention, had such a prayer been made even on 13th January, 2011, the same would have been given adequate consideration on that date also. Therefore, we don't agree with the contention of the learned counsel for the respondent that merely because on an earlier occasion four weeks' time was granted to the appellant, that precludes the appellants from making a prayer for fixing the installments in remitting the amount in question. The applications, therefore, need to be considered on their own merits.

Since, for the reasons stated in the application, which are taken note of in brief above, we are inclined to fix installments for making the payment. We may observe that even if the payment is made in installments, the Revenue does not get prejudiced in any way inasmuch the Revenue would be receiving the amount in question, though over a spread of time. However, at the same time, we are of the view that the installments should start from the month of January 2011 when the order in the said applications were passed by this Court. This will take care of even the alleged delay in preferring these applications. In the circumstances, we direct as under:

(i) The payment of Rs.3.00 crores by each of the appellants shall be made in 10 equal installments of Rs.30.00 lakhs each and starting from January 2011.

(ii) Since we are already in the month of March 2011, a sum of Rs.90.00 lakhs in each of the appeals has become due which shall be deposited by the appellants with the respondent by 31st March, 2011. Installments from April 2011 onward shall be paid by 15th of each month, i.e., 15th April, 2011; 15th May, 2011 etc. and the last installment in this manner shall be given by 15th October, 2011. All the appellants shall file affidavit of undertaking before this Court whereby they will give an undertaking to adhere to the aforesaid schedule. It is made clear that in case, there is a default even in making the payment of one installment, the concession given by this order stand forfeited and entire balance amount shall become due and recoverable by the respondent.

(iii) The appellants shall also file their affidavits as well as affidavits of the concerned persons giving security of the property particulars whereof are mentioned in paragraph 7 of the application. The said security shall be to the satisfaction of the Registrar of this Court.

The applications are disposed of in the aforesaid terms. Matter is fixed before the Registrar on April 4, 2011 for accepting the security and affidavits.

Copies of this order be given *Dasti* to the counsel for the parties.

A.K. SIKRI, J.

MARCH 22, 2011 **M.L. MEHTA, J.**

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