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

Decided on 23rd February, 2015

\+ CEAC 105/2014 & C.M.No.19444/2014

SNE INDIA PVT. LTD. ..... Petitioner

Through: Mr.Rupesh Kumar and Mr.Hrihikesh, Advs.

versus

COMMISSIONER OF CENTRAL EXCISE, DELHI-II ..... 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. Issue notice.

2. Mr.Satish Kumar, Standing counsel accepts notice on behalf of the respondent.

3. With the consent of the learned counsel of the parties, the matter is argued finally. The question of law urged on behalf of the assessee/appellant is: “Whether the final order of CESTAT dismissing the appeal for not complying with the directions to deposit ₹6 lakhs is correct under the circumstances”?.

4. The appellant was issued a Show Cause Notice (SCN) for violating Rule 8(3A) of the Central Excise Rules, 2002 (hereinafter referred to as "the Rule"). The Rule stipulates that if there is a delay in making the duty payment beyond the prescribed 30 day time period, the assessee would be treated as a defaulter and would have to pay for each consignment at the time of removal.

5. The assessee had, instead of depositing the amount in cash or through account PLA (under the Rules), sought to claim adjustment of amounts lying to its credit in its CENVAT credit account. The SCN was replied by the assessee stating/alleging that duty liability was in fact discharged eventually by paying ₹7,52,903/-. The appellant approached the CESTAT. At the stage of hearing of the stay application, there was a difference of opinion; one member holding a view that interest of justice would be best sub served if the appellant was directed to deposit ₹5000/- as a pre-condition whereas the other view was that the appellant should be heard only on the payment of ₹13,39,225/-. The third member's view – on the stay application – was that the sum of ₹ 6 lakhs was to be paid as the pre-deposit. The appellant could not comply and consequently the appeal was dismissed in default.

6. The appellant urges that this Court should, in the circumstances of the case, and follow the ruling of Gujarat High Court in *Indsur Global Ltd. vs. Union of India* 2014 (310) ELT 833 (Guj.). It is argued that the view of the High Court is that the default is of technical one and cannot result in denial of the facility of credit altogether. Learned counsel for the Revenue, on the other hand, submits that given the majority view on the stay application and the final order, which was made in default, the appellant is

obligated to pre-deposit the amount directed. He relied upon the decision of Madras High Court in *Unirols Airtex vs. Assistant Commissioner of Central Excise, Coimbatore* 2013 (296) ELT 449 (Mad.), and Gujrat High Court *Commissioner of Central Excise vs. Harish Silk Industries* 2013 (288) ELT 74 (Guj.)

7. This Court has carefully considered the submissions. It is a matter of record that the duty liability was discharged in the present instance along with interest, though beyond the stipulated period of 30 days. In these circumstances, the limited issue was whether the denial of credit facility altogether was warranted. The CESTAT had no occasion given the diversion of opinion of two of its members and the final opinion of the third member, which varied with both the members to the extent that he directed deposit of ₹6 lakhs, to consider the order on merits. In one sense, the order of the third member by default becomes the order of the Tribunal on the question of pre-deposit. Further, the appellant's contentions were never considered on the merits after it complied with one member's order of depositing Rs.5000/-.

8. We are of the opinion that interest of justice will be best served if the appeal is restored to the file of the CESTAT and on the merits, the CESTAT would, of course take into consideration the diverse views of the Madras and Gujrat High Courts on the issue , and render its verdict on the merits of the issue raised. All rights and contentions are expressively reserved. In these circumstances, the assessee's appeal would be considered on its merits provided it has complied and deposited ₹5,000/-.

9. The question of law is answered in favour of the appellant and against the Revenue.

10. The appeal and the pending application are disposed of in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 23, 2015
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