

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 32 of 2015 (O&M)

Date of Decision: 20.1.2016

M/s Hero Motocorp Ltd., New Delhi

....Appellant.

Versus

Commissioner, Central Excise Commissionerate, Delhi-III

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Amrinder Singh, Advocate for the appellant.

Mr. Sanjay Vashist, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing STANos. 32 and 33 of 2015 as according to learned counsel for the parties, identical questions of law and facts are involved therein. For brevity, the facts are being extracted from STA No. 32 of 2015.

2. STA No. 32 of 2015 has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 29.9.2015 (Annexure A-1) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") directing the assessee to deposit ₹ 1.25 crores with proportionate interest as pre-deposit.

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is

registered with the Service Tax Department under the taxable category of 'Business Auxiliary Service' and 'Transport of Goods by Road Service' vide registration certificate dated 28.5.2007 (Annexure A-2) to pay service tax on the services provided by them. Besides this, the appellant is also engaged in the manufacturing of motorcycle/parts thereof. It entered into a License and Technical Assistance Agreement dated 2.6.2004 (Annexure A-3) with Honda Motor Company Ltd. whereby it had been granted right and licence to manufacture, assemble, sell, distribute, repair and service of certain products and parts thereof in India designed and developed by Honda Japan. Further, the appellant had been allowed to export its products outside the Indian Territory after entering into a separate Export Agreement dated 15.1.2005 (Annexure A-4) with Honda Japan for the purpose of seeking consent to export beyond the license territory. Two show cause notices dated 28.3.2008 (Annexure A-5) for the period 9.7.2004 to 31.12.2007 raising demand of ₹ 4,40,32,283/- and dated 22.4.2009 (Annexure A-6) for the period 1.1.2008 to 31.1.2009 raising demand of ₹ 1,53,61,951/- including Education Cess and Secondary & Higher Education Cess were issued to the appellant along with interest under Section 75 of the Act and penalties under Sections 76 and 77 of the Act and under Section 78 of the Act qua the notice dated 28.3.2008 (Annexure A-5). The appellant filed replies dated 5.6.2008 (Annexure A-7) and dated 18.9.2009 (Annexure A-8) to the aforesaid notices. During the course of personal hearing, the appellant submitted additional submissions and synopsis dated 13.12.2011 (Annexure A-9) before the respondent. The respondent-Commissioner, Central Excise Commissionerate, Delhi-III, vide order dated 31.10.2013 (Annexure A-10) confirmed the service tax

demand under reverse charge basis under the category of 'Business Auxiliary Service' on the commission paid by the appellant to Honda Japan to grant its consent to it to export its products in the designated countries along with interest and also imposed penalties under Sections 76 and 77 of the Act. Further, the penalty of equal amount under Section 78 of the Act under show cause notice dated 28.3.2008 was confirmed. However, the demand pertaining to the period before 18.4.2006 had been dropped. Feeling aggrieved by the order, Annexure A-10, the appellant filed two appeals along with stay applications (Annexure A-11 Colly) before the Tribunal. The Tribunal vide order dated 29.9.2015 (Annexure A-1) directed the appellant to deposit a sum of ₹ 1.25 crores along with proportionate interest, as a pre-condition to hear the appeal on merits. Hence, the present appeals.

4. Learned counsel for the appellant submitted that the requirement of ₹ 1.25 crores with proportionate interest as pre-deposit as directed by the Tribunal was unfair and excessive. He, however, submitted that the appellant has deposited the principal amount of ₹ 1.25 crores in terms of order dated 4.11.2015 passed by this Court.

5. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the Tribunal has rightly directed the appellant to deposit ₹ 1.25 crores with proportionate interest as pre-deposit.

6. This Court vide order dated 4.11.2015 while issuing notice of motion for 30.11.2015 directed the Tribunal not to dismiss the appeal of the assessee for want of pre-deposit in terms of order dated 29.9.2015 in case the appellant deposits the principal amount of ₹ 1.25 crores.

7. The primary dispute that arises for consideration in these

appeals relates to the quantum of pre-deposit to be made by the appellant as a condition precedent for the hearing of the appeal by the Tribunal.

8. After hearing learned counsel for the parties and keeping in view the totality of the facts and circumstances of the case coupled with the fact that the appellant has already deposited the principal amount of ₹ 1.25 crores, in terms of order dated 4.11.2015, the instant appeals are disposed of by making the interim order dated 4.11.2015 absolute. The Tribunal is directed to hear the appeals on merits without insisting for any further deposit.

(AJAY KUMAR MITTAL)
JUDGE

January 20, 2016
gbs

(RAJ RAHUL GARG)
JUDGE