IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 116 OF 2015

K.M. Sakhar Karkhana Pvt. Ltd. .. Appellant

v/s.

Union of India & Ors. .. Respondents

Mr. Vinay Ansurkar i/b Mr. Brijesh Pathak for the appellant
Mr. Pradeep S. Jetty a/w Mr. Jitendra B. Mishra for the respondent

CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.

DATED : 3rd JULY, 2017

P.C.

1. The present appeal is filed against the order dated 09.12.2014 wherein the application of the appellant for restoration of the appeal is dismissed.

2. The learned Counsel for the appellant submits that the appellant has deposited the amount partly by way of CENVAT and partly in cash of Rs.2,34,128/-. The said aspect was considered in an appeal filed by the present appellant under order dated 25.06.2014 in Appeal No.43 of 2013. This Court had considered the deposit of

the amount by the appellant. According to the learned Counsel when the entire amount has been deposited, the Tribunal erred in dismissing the appeal.

3. Mr. Jetly, learned Counsel for the respondent submits that the order of the Tribunal dated 08.12.2011 is abundantly clear. It directs the appellant to deposit Rs.28,81,425/- in cash. In an earlier appeal referred to by the appellant, this Court disposed of the appeal on the representation of the appellant that the amount is deposited and this Court had observed that if the Tribunal is satisfied with the compliance, then the appeal be taken up for hearing. As the entire amount has not been deposited in cash, the Tribunal was justified in passing the impugned order.

4. We have considered the submissions canvassed by the learned Counsel for the respective parties. There is no dispute that the entire amount of Rs. 28,81,425/- is not deposited by the appellant in cash and claims to have deposited major amount vide CENVAT and only Rs.2,34,128/- is deposited in cash. Certainly, the same is not compliance with the order dated 08.12.2011 passed by the CESTAT.

The order dated 25.06.2014 in Central Excise Appeal No.43 of 2013 would not enure to the benefit of the appellant inasmuch as, this Court had observed that if the Tribunal is satisfied with the compliance then, the appeal may be taken up for hearing and adjudication on merits.

5. It is explicitly clear that the appellant has not deposited the said amount in cash. As such, the Tribunal passed the impugned order dated 09.12.2014 dismissing the appeal.

6. On the last date, we had asked the learned Counsel for the appellant as to whether the appellant is ready to deposit the amount as demanded by the CESTAT in its order dated 08.12.2011. The learned Counsel took time to take instructions. Today, the learned Counsel, on instructions, submits that the appellant is ready to deposit the remaining amount in cash.

7. Considering the *bona fides* shown by the appellant, we are inclined to exercise discretion in favour of the appellant to the extent of granting him time to deposit the amount in cash. In view of the

aforesaid, we pass the following order.

ORDER

(a) The appellant shall deposit the amount as directed by the Tribunal in its order dated 08.12.2011 i.e. Rs.28,81,425/- after deducting the amount deposited by him in cash within a period of six weeks from today.

(b) If the amount as directed herein is deposited within a period of six weeks then, the order dated 09.12.2014 stands set aside and the appeal would restore to its original position.

(c) It is made clear that deposit of the amount within the period stipulated is condition precedent.

(c) The appeal is accordingly allowed in the above terms.. No costs.

(A.M. BADAR, J.) **(S.V. GANGAPURWALA, J.)**