IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 166 OF 2015

Prashant R. Mehta …. Appellant
V/s.
The Commissioner of Central Excise,
Mumbai -I …. Respondent

WITH

CENTRAL EXCISE APPEAL NO. 167 OF 2015

Deepak R. Mehta …. Appellant
V/s.
The Commissioner of Central Excise,
Mumbai -I …. Respondent

Mr. Vivek V. Khemka for the appellants.
Mr. A.M. Sethna a/w. Mr. M.M. Dwivedi &
Mr. Sham V. Walve for the respondent.

CORAM : A.S. OKA, &
RIYAZ I. CHAGLA, JJ.

DATE : 14th August, 2017

P.C.:

. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent. Forthwith taken up for final disposal.

2. The appellants in these two appeals preferred separate appeals before the Customs, Excise and Service Tax Appellate Tribunal (for short 'Appellate Tribunal'), West Zonal Bench at Mumbai. These appeals were preferred for challenging the order dated 06th December, 2013 passed by the Commissioner of Central Excise confirming the demand of Rs.93,20,624/- under Section 11A of the Central Excise Act, 1944 made against the appellant in Central Excise Appeal No. 166 of 2015. By the said order dated 06th December, 2013, recovery of interest under section 11AB of the Central Excise Act, 1944 was ordered against the appellant in Central Excise Appeal No. 166 of 2015. In addition, penalty of Rs.23,00,00,000/- under Rule 209(A) of the Central Excise Rules, 1944 was imposed on the appellant in Central Excise Appeal No.166 of 2015. Penalty of Rs.93,20,624/- was imposed on the Appellant in Central Excise Appeal No.167 of 2015 under Rule 209(A) of the Central Excise Rules, 1944.

3. The applications for stay taken out by the appellants in the two appeals alongwith an application for stay in another appeal were taken up by the Appellate Tribunal for hearing and were disposed of by the order dated 23rd February, 2015. By the said order dated 23rd February, 2015, the appellant in Central Excise Appeal No.166 of 2015 was ordered to deposit a sum of Rs.25,00,000/- towards duty and the appellant in Central Excise Appeal No.167 of 2015 was ordered to deposit a sum of Rs.10,00,000/- towards penalty. Time of eight weeks was granted to the appellants to deposit the amounts.

4. By order dated 05th May, 2015, the applications made by the appellants in these two appeals for modification of the order dated 23rd February, 2015 were rejected. Thereafter, on the failure of the appellants in these two appeals to comply with the order dated 23rd February, 2015, the Appellate Tribunal proceeded to dismiss the appeals preferred by the appellants by order dated 13th July, 2015.

5. In Central Excise Appeal No. 166 of 2015, the learned counsel appearing for the appellant pointed out that a sum of Rs.2,25,000/- was deposited by the appellant on 09th June, 2015. He tenders across the Bar an undertaking on oath by the appellant in the said appeal in which he has given an undertaking to deposit a sum of Rs.22,75,000/- within six weeks from 07th August, 2017. The undertaking is taken on record and marked 'X1' for identification.

6. In Central Excise Appeal No.167 of 2015, the appellant has deposited a sum of Rs.50,000/- on 09th June, 2015. The appellant therein has tendered an undertaking to deposit an amount of Rs.9,50,000/- within six weeks from 07th August, 2017. The said undertaking is taken on record and marked 'X1' for identification.

7. The learned counsel appearing for the respondent states that he has no instructions about the deposit of a sum of Rs.2,25,000/- by the appellant in Central Excise Appeal No. 167 of 2015 and a sum of Rs.50,000/- by the appellant in Central Excise Appeal No. 167 of 2015. However, we find that photocopies of the challans have been annexed to both the appeals.

8. The challenge in these two appeals is to the orders dated 23rd February, 2015 and 23rd July, 2015. As the appellants have given an undertaking on oath to this Court to deposit balance amounts respectively payable by them as per the order dated 23rd February, 2015 within a period of six weeks from 07th August, 2017, an opportunity deserves to be granted to the appellants to prosecute their appeals on merits.

9. Accordingly, we dispose of the appeals by passing the following order :-

<u>O R D E R</u>

(i). We accept the undertakings given by the appellants in both the appeals which are taken on record in respective appeals and marked 'X1' for identification. We also accept the statement made by the appellant in Central Excise Appeal No.166/2015 that a sum of Rs.2,25,000/- was paid by the appellant therein on 09th June, 2015.

(ii). We also accept the statement made by the appellant in Central Excise Appeal No. 167 of 2015 that a sum of Rs.50,000/- was deposited by the said appellant on 09th June, 2015. If the said statements are found to be incorrect, we grant liberty to the respondent to apply to this Court for recall of this order.

(iii). If the appellant in Central Excise Appeal No. 166 of 2015 deposits a sum of Rs.22,50,000/- with the Central Excise

Department and submits a copy of challan to the office of the Appellate Tribunal within a period of six weeks from 07th August, 2017, the impugned orders dated 23rd February, 2015 and 13th July, 2015 shall stand set aside and Appeal (No.E/85764/14-MUM) before the Appellate Tribunal shall stand restored. On the failure of the appellant to comply with these direction, the order of dismissal dated 13th July, 2015 shall stand.

(iv). If the appellant in Central Excise Appeal No. 167 of 2015 deposits a sum of Rs.9,50,000/- to the Central Excise Department and submits a copy of challan in the office of Appellate Tribunal within a period of six weeks from 07th August, 2017, the order dated 13th July, 2015 shall stand set aside and Appeal (No. E/85765/14-MUM) before the Appellate Tribunal shall stand restored. On the failure of the appellant to comply with these directions, the order of dismissal dated 13th July, 2015 shall stand.

(v). The appeals are partly allowed on the above terms. There will be no order as to costs.

(vi). All concerned to act on an authenticated copy of this order.

(RIYAZ I. CHAGLA, J.) **(A.S. OKA, J.)**