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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-27220-2018 (O&M)
Date of Decision: October 23, 2018

M/s Rockman Industries Ltd.
.....Petitioner

Versus

Union of India and others
......Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr.Jagmohan Bansal, Advocate for the petitioner.

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RAJESH BINDAL, J.

The petitioner has approached this Court with a prayer that direction be issued to the Customs, Excise and Service Tax Appellate Tribunal, Chandigarh (for short, 'the CESTAT') to hear the appeal filed by it without any pre-deposit of the amount of the demand of service tax.

A demand of service tax amounting to ₹5,28,94,600/- was raised against the petitioner. In addition, equal amount of penalty was also levied. Demand was raised after affording due opportunity of hearing to the petitioner. Aggrieved against the order, the petitioner preferred appeal before the CESTAT. The CESTAT vide communication dated 10.05.2018 notified the petitioner the following defects in appeal, on scrutiny:

> "And Whereas scrutiny following defect(s) have/has been noted:
>
> 1. Appeal is not supported with true copy (Copy certified by the appellant or appellants representative)

of OIA for 1st, 2nd, 3rd & 4th Set as per rule 8(3) of CESTAT Procedure rules.

2. Appeal is not supported with certified copies (Original copy or a copy duly attested by the Authorised Advocate or concerned department) of O-I-A in 1st set as per rule 9(1) of CESTAT Procedure rules.-1st Set.
3. Evidence of mandatory deposit as envisaged u/s 129E of Customs Act 1962/ 35F of CE Act 1944 extant has not been adduced. Hence, the same should be filed in quadruplicate with an undertaking and duly self attested that the mandatory deposit is towards filing appeal against the impugned order.

The matter has been listed before the Assistant Registrar, CESTAT on 7.6. at 11.00 A.M. You are directed to remove the defects or appear in person or through authorized representative of the said date."

Defects pointed out at Sr.Nos.1 and 2 above are not in issue in the present petition. The prayer sought to be made by the petitioner is that the Tribunal be directed to hear the appeal filed by him without any pre-deposit.

Objection No.3 raised by the Tribunal required evidence of mandatory deposit. In terms of Section 35F of the Central Excise Act, 1944, as applicable in the case in hand, a pre-deposit of 7.5% of the duty or duty and penalty in dispute is to be made as a pre-condition for entertainment of appeal. To avoid fulfilling the pre-requisite condition for entertainment of appeal, learned counsel for the petitioner sought to address arguments on merits of the controversy while stating that for the period prior thereto and subsequent, no demand of service tax was raised in similar circumstances.

We are afraid that we cannot appreciate the merits of the controversy at this stage once the same is subject matter of consideration before the Tribunal. Any *prima facie* opinion on merits expressed by this Court at this stage may prejudice the case of either of the parties. Pre-deposit required is merely 7.5%.

For the reasons mentioned above, we do not find any case is made out for interference in the present petition.

The writ petition is accordingly dismissed.

(RAJESH BINDAL)
JUDGE

October 23, 2018
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(MAHABIR SINGH SINDHU)
JUDGE

1. Whether speaking/reasoned ? Yes/No
2. Whether reportable ? Yes/No