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

+ **WRIT PITION (CIVIL) 2189/2018**

Date of Decision: 9th May, 2018.

M/s VEGA AUTO ACCESSORIES (PVT) LTD, Petitioner

Through Mr. Vibhor Mathur, Adv

versus

REGISTRAR, CUSTOMS, EXCISE & SERVICE TAX

APPELLATE TRIBUNAL, & ANR. Respondents

Through Mr. Sanjeev Narula, Sr. Standing
Counsel for Customs with Mr.
Abhishek Ghai, Adv

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Petitioner M/s. Vega Auto Accessories (Pvt) Ltd is a company against whom adverse orders-in-original were passed by the Assistant Commissioner, Central Excise & Service Tax, Rampur (Uttar Pradesh). These orders pertain to different periods, albeit the primary issue was common, i.e., whether or not the petitioner had commenced commercial production on or before 31st March, 2010, a requirement to obtain benefit of exemption under the Notification No.50/03-CE dated 10th June, 2003. The finding in orders-in-original was that the petitioner had not commenced commercial production until 7th April, 2010 and, therefore, did not fulfill the mandatory condition to avail the benefit under Notification dated 10th June,

2003. Accordingly, the petitioner was liable to pay Excise Duty including Education Cess and Secondary Higher Education Cess as well as penalty of under Rule 25(1) of the Act.

2. Some of the orders-in-original were made subject matter of the appeals before Customs, Excise & Service Tax Appellate Tribunal, which appeals were allowed vide order dated 6th February, 2017 accepting the stand and stance of the petitioner that it had commenced commercial production on or before 31st March, 2010.

3. Respondent/Revenue had thereafter preferred several appeals before the High Court of Uttarakhand at Nanital which were dismissed vide order dated 5th July, 2017 as not maintainable before the said High Court in view of the judgment in Central Excise Appeal No.10/2015, ***Commissioner of Central Excise & Sales Tax vs. M/s Trupati LPG Industries Ltd.*** decided on 4th May, 2017. It is stated by the counsel for petitioner that respondents have not preferred any appeal before the Supreme Court impugning the order dated 6th February, 2017 in the case of the petitioner passed by the Tribunal. In other words, the contention of the petitioner is that the order of the Tribunal dated 6th February, 2017 that the petitioner had commenced commercial production on or before 31st March, 2010, has attained finality and has been accepted.

4. The petitioner has filed the present writ petition with a prayer that the appeal of the petitioner filed by Diary No.509852017 should be admitted for consideration and heard, without insisting on pre-deposit under amended Section 35F of Central Excise Act, 1944 in view of the earlier orders passed by the Tribunal which have attained finality, upholding stand and stance of

the petitioner on claim of exemption under notification dated 10th June, 2003.

5. Learned counsel for the respondent/Revenue accepts that the Revenue has not till today preferred any appeal before the Supreme Court impugning the order of the Tribunal dated 6th February, 2017 upholding and accepting the stand of the petitioner that they had commenced commercial production on or before 31st March, 2010.

6. In view of the aforesaid factual background, we are inclined to accept the prayer made by the petitioner that the appeal filed before Tribunal vide Diary No.509852017 should be admitted and heard without insisting on pre-deposit under amended Section 35F of the Central Excise Act. The petitioner has already succeeded before the Tribunal on the question of grant of exemption under notification dated 10th June, 2003 in other connected appeals. The said order of the Tribunal has attained finality as no appeal has been preferred by the Revenue before the Supreme Court. Pre-deposit in these circumstances would be a technicality and mere formality for the issue is settled by an earlier order in favour of the petitioner. Secondly, the petitioner has expressed and shown financial hardship and distress by referring to balance sheet and profit and loss account for the year ending 31st March, 2017, which reflects accumulated losses of over Rs.59,918,456.93. Petitioner, it is stated, had earlier made pre-deposit of Rs.16,43,400/- for hearing of decided appeals, which amount has not been refunded. This amount has been adjusted towards amount payable against the impugned order in original. The petitioner, it is stated, would have to make a further

deposit of Rs.38 lacs approximately after accounting for and given benefit of Rs.16,43,400/-.

7. The view taken by us is in consonance with the decision of this Court in *Pioneer Corporation vs. UOI & Anr.* 2016 (340) ELT 63 (Del) and decision dated 27th April, 2018 in WP(C) 138/2018 *Shubh Impex vs. UOI & Ors.*

8. Accordingly, we dispose of the present writ petition and direct that the Tribunal will admit and hear the appeal preferred by the petitioner without insisting on pre-deposit of 7.5% of the tax and penalty. We clarify that we have not considered and examined merits of the appeal preferred by the petitioner before the Tribunal. We also clarify that we have not specifically gone into the issue regarding the date of commencement of commercial production by the petitioner.

9. The writ petition is accordingly disposed of, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MAY 09, 2018
Sm/VKR