IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.37936 & 37937 of 2003

M/s.Mohan Breweries & Distilleries Ltd.,
Glass Division,
Rep. by its Vice President (Finance)
& Company Secretary,
Mr.T.Krishnamurthy. ...Petitioner in all WPs

Vs

1. Union of India,
   Ministry of Finance,
   Rep. by its Secretary,
   Department of Revenue,
   North Block,
   New Delhi - 110011.

2. Commissioner of Central Excise (Appeals)
   26/1, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai - 600034.

3. The Assistant Commissioner of
   Central Excise,
   Central Excise Division,
   Pondicherry - 605001. ...Respondents in all WPs

PRAYER in WP.No.37936 of 2003: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the second respondent in impugned order No.3/11/03 dated 10.11.2003 in Appeal Nos.422 & 504/2002 (P) and quash the same to direct the second respondent to hear the Appeal Nos.422 & 504/2002 (P) without insisting of pre-deposit of duty.

PRAYER in WP.No.37937 of 2003: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration, to declare the amendment contained in Section 35A(3) of the Central Excise Act, 1944 vide Section 128 of the Finance Act, 2001 insofar as it seeks to remove the power to remand from the second respondent as ultra vires Article 14 and 265 of the Constitution of India insofar as the petitioner is concerned.

For Petitioner : Mr.M.Rajendran
(in all WPs)

For Respondents: Mr.A.P.Srinivas, SSC
(in all WPs)

C O M M O N O R D E R

The order under challenge in these writ petitions is to an interim order passed under Section 35 of the Central Excise Act, directing the petitioner to pre-deposit a sum of Rs.28,00,000/-.

2. When the impugned order came to be passed, there was no mandatory condition for a pre-deposit, though the Commissioner of Central Excise had powers to order for a pre-deposit. It is now brought to the notice of this Court that the appeal, which is pending for more than 16 years, has not proceeded with, in view of the pendency of this writ petition. At this belated stage, it would not be justifiable to direct the petitioner to make the pre-deposit. In my view, if the appeal itself is directed to be disposed of within stipulated time, the ends of justice would be met.

3. In the light of the above observations, the second respondent herein is called upon to dispose of the Appeal Nos.422 & 504/2002 arising out of Order-in-Original Nos.175/2000 and 291/1999, within a period of 3 months from the date of receipt of a copy of this order, without insisting for the pre-deposit from the petitioner.

4. Accordingly, the writ petitions stand disposed of. No costs.

hvk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 110011.

2. The Commissioner of Central Excise (Appeals)
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600034.

3. The Assistant Commissioner of
Central Excise,
Central Excise Division,
Pondicherry - 605001.

+1cc to Mr.M.Rajendiran, Advocate, SR.No.41081
+1cc to Mr.A.P.Srinivas, Advocate, SR.No.41199

W.P.Nos.37936 & 37937 of 2003

Kak(12/07/2019)