$~1.

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

% *Date of Decision: 15th November, 2019*

\+ **W.P.(C) 11490/2019**

BLUE WHALE ENTERPRISES INDIA PRIVATE LIMITED AND ANR. ..... Petitioners

Through: Mr.Shamik S.Smajanwala, Adv. with Mr.Sunil Kr.Kaundal, Adv.

Versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr.Nirvikar Verma, Adv. for R-1&2. Mr.Amit Bansal, SSC with Mr.Aman Rewaria, Ms.Vipasha Mishra, Advs. for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

: **D.N.PATEL, Chief Justice** *(Oral)*

C.M.No.47208/2019*(exemptions)*

Allowed, subject to all just exceptions.

W.P.(C). No.11490/2019

1. This writ petition has been preferred challenging the order dated 5th December, 2018 passed by the Revisional Authority in Revision Application No.195/60/16/RA (Annexure P-5 to the memo of the writ petition) as well as the order dated 19th August, 2019 (Annexure P-7 to the memo of the writ petition).

2. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the petitioner is claiming a rebate of Rs.67,73,865/- in respect of 21 assignments. First show cause

notice was issued to the petitioner on 2nd November, 2011 for rejection of 8 rebate claims and another show cause notice dated 5th December, 2011 for rejection of remaining 13 rebate claims of the petitioner were issued to the petitioner. Thereafter, order-in-original was passed on 4th July, 2012 (Annexure P-1) rejecting the rebate claims under both the aforesaid show cause notices.

3. Thereafter, appeal was preferred by the petitioner before the Commissioner (Appeals), Jaipur. Order-in-appeal was passed on 6th April, 2016 (at page-152 of the writ petition). By this order-in-appeal, the appeal preferred by the petitioner was dismissed. Being aggrieved and feeling dissatisfied with the aforesaid order-in-appeal passed by the Commissioner (Appeals), Jaipur, the petitioner preferred Revision Application bearing No.195/60/16/RA before the Revisional Authority under Section 35EE(3) of the Central Excise Act, 1944.

4. It is contended by the learned counsel for the petitioner that in fact under Section 35EE (3) of the Central Excise Act, 1944, no court fee is to be paid by the petitioner. As per the provisions of Section 35EE(3) of the Central Excise Act, 1944, in case of demand, the court fee is required to be paid but in case of rebate claim, there is no such requirement of payment of court fee.

5. This aspect of the matter has not been properly appreciated by the Revisional Authority while passing the impugned order dated 5th December, 2018. Nonetheless upon insistence of the Revisional Authority, the amount of Rs.1,000/- as court fee was paid initially but as per the Revisional Authority, there was a deficit of Rs.800/-. However, as per the provision as stated hereinabove, no court fee is required to be paid in case of a rebate

claim by the petitioner.

6. In view of the aforesaid submission and also looking to the provisions of Section 35EE (3) of the Central Excise Act, 1944, the petitioner was not liable to make the payment of any court fee before the Revisional Authority. For ready reference Section 35EE of the Central Excise Act, 1944 is extracted hereinbelow:-

> "**35EE. Revision by Central Government -** (1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order:
>
> Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.
>
> Explanation.—For the purposes of this sub-section, "order passed under section 35A" includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 (21 of 1984) against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.
>
> (1A) The Principal Commissioner of Central Excise or Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.
>
> (2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:
>
> Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting

> the application within the aforesaid period of three months, allow it to be presented within a further period of three months.
>
> (3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of,—
>
> (a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise Officer in the case to which application relates is one lakh rupees or less;
>
> (b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an Central Excise Officer in the case to which the application relates is more than one lakh rupees:
>
> Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A)."

7. Thus, in view of the fact that the petitioner is claiming a rebate of Rs.67,73,865/- (for total of 13 + 8 rebate claims), no question whatsoever arises of making payment of court fee before the Revisional Authority. Nonetheless, the petitioner has already paid Rs.1,000/- demanded by the respondents towards court fee.

8. We, therefore, quash and set aside the order dated 5th December, 2018 passed by the Revisional Authority as the Revisional Authority has dismissed the revision application preferred by the petitioner on technical ground of non-payment of court fee of Rs.800/- which even otherwise, the petitioner was not liable to pay. We hereby also quash and set aside the impugned order dated 19th August, 2019 passed by the Revisional Authority. The revision application filed by the petitioner before the Revisional Authority is revived with the same number and matter is remanded to the

Revisional Authority for fresh decision on merits in accordance with law, rules and regulations and evidence on record as expeditiously as possible and practicable.

9. With these observations, this petition is allowed.

C.M.No.47207/2019*(stay)*

In view of the final order passed in the writ petition, this application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 15, 2019
'anb'