Item No.12

**IN THE HIGH COURT AT CALCUTTA**
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

**MAT 2255 of 2014**
**With**
**CAN 1 OF 2014**
**(Old No. CAN 12526 of 2014)**

**Date of decision:-26.08.2021**

**M/s Eastern Spinning Mills and Industries Ltd. and Another**
**…Appellant**
**-versus-**

**Commissioner of Central Excise, Kolkata-III and Another**
**…Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL,**
**CHIEF JUSTICE (ACTING)**
**HON'BLE MR. JUSTICE RAJARSHI BHARADWAJ,**
**JUDGE**

**Present:-** Mr. Arijit Chakraborty,
Mr. Nilotpal Chowdhury, Advocates
… for the appellant

Mr. K.K. Maiti, Advocate
... for the respondents

## ORDER

1. The present appeal has been filed impugning the order dated November 10, 2014 passed by the learned Single Judge. The writ petition filed by the appellant was dismissed.

2. It is a case in which vide order dated October 07, 2013 the appellant was directed to deposit 25% of the disputed amount, approximately ₹9 lakhs as a condition precedent for hearing of the applicant's appeal on merits. The order was passed by CESTAT. On account of non-compliance of the order, the PIL filed by the appellant was dismissed by the CESTAT vide order dated August 18, 2014. Both the orders were challenged by filing a writ petition. The writ petition was dismissed.

3. the learned Counsel for the appellant submitted that the condition imposed was onourous. The company was not in good health as winding-up proceedings were pending against it. Entire amount could not be arranged, however, a sum of ₹6.50 lakhs was deposited. An application was filed before the CESTAT for modification of the order, however, when the application was taken up for hearing, the main appeal itself was rejected on account of non-compliance of the condition imposed for entertainment of appeal. He submitted that substantial compliance having been made, the appeal filed by the appellant should be directed to be heard on merits. He further submitted that at present, though the appellant company had come out of the winding-up proceedings but still it is not functional. It was further submitted that the condition for mandatory deposit for entertainment of appeal was reduced further to 7.5% vide amendment dated August 06, 2014. Hence, the benefit thereof should have been given to the appellant. In support of his argument, he has referred to two orders passed by the Rajasthan High Court in **Jain Poles Industries v. Union of India, 2016 (336) E.L.T. 649 (Raj.)** and **Arjun Industries Limited v. Commissioner of Customs, Jaipur, 2015 (320) E.L.T. 497 (Raj.).**

4. On the other hand, learned Counsel for the respondent submitted that the appellant was directed to deposit 25% of the disputed amount as a condition precedent for entertainment of appeal and the appellant having failed to comply with the condition, it cannot pray for hearing of the appeal on merit as the appellant defaulted in complying with condition of pre-deposits. The appeal has rightly been disposed by CESTAT. It is too late now for the appellant to claim indulgence from this Court. About 8 years have lapsed ever since the order for entertainment of appeal was passed by the CESTAT and about 7 years after the writ petition was dismissed by the learned Single Judge but the appellant has not taken any interest to pursue with the matter and is not seeking to get its appeal heard by the Division Bench of this Court. The orders sought to be relied upon by the appellant will not come to its rescue for the reason that the same are interim orders passed by the Rajasthan High Court.

5. Heard the learned Counsel for the parties and perused the paperbook.

6. It is a case in which demand to the tune of ₹39,00,757.07 was raised against the appellant. The demand was confirmed by the Commissioner of Central Excise (Appeals-I), Kolkata vide order dated August 04, 2011. The appellant filed an application before the CESTAT. Vide order dated October 07, 2013, CESTAT directed for deposit of 25% of the duty confirmed as a pre-condition for entertainment of appeal within eight weeks from the date of the order. 25% of the demand to be deposited by the appellant came out to ₹9,75,189.26. Admittedly, the appellant deposited only a sum of ₹6,50,000. Raising an issue that there were proceedings pending against the company under the provisions of the Sick

Industrial Companies (Special Provisions) Act, 1985, the application was filed praying for modification of the order and on partial deposit of the amount, the PIL may be directed to be heard on merits.

7. The appeal was taken up for hearing by CESTAT on August 18, 2014. The order passed by the CESTAT on that day records that the modification application filed by the appellant was adjourned number of times to enable the appellant to deposit the balance amount, however, the order was not complied with. The appellant could deposit only ₹6.50 lakhs. Though initially, a period of eight weeks was granted for deposit of the amount, however, even after giving him a period of ten months, the appellant could not comply with the order. While noticing that sufficient time was granted to the appellant to comply with the order and it having failed to do so, the appeal was dismissed on account of non-compliance of the pre-condition for entertainment of appeal.

8. The writ petition filed by the petitioner was dismissed by this Court on November 10, 2014.

9. The argument raised by the learned Counsel for the appellant that the provision having been amended subsequently, he should have been given the benefit thereof by reducing the amount to be deposited as pre-condition for entertainment of appeal. However, we are not impressed with the argument as the appellant has not shown any intention to deposit the amount. Initially order was passed by the CESTAT on October 07, 2013 and ever since then, only time is being sought. Earlier about ten months time was granted by keeping the application for modification pending. Initially, the appellant company was before by BIFR, however, as on today, it was stated that though the company had come out of winding-up

proceedings but still it is not functional. The present appeal, though filed in the year 2014, was never pursued. The orders passed by the Rajasthan High Court as referred to above do not come to the rescue of the appellant for the reason that these were interim orders and there was no final adjudication on the issue.

10. Even at the time of hearing, an offer was made to the appellant to deposit the entire amount of demand even now so that its prayer for hearing of appeal on merits could be considered but the learned Counsel expressed his inability.

11. For the reasons mentioned above, we do not find any error in the order passed by the learned Single Judge and the appeal is accordingly, dismissed.

**(RAJESH BINDAL)**
**CHIEF JUSTICE, ACTING**

**(RAJARSHI BHARADWAJ)**
**JUDGE**

Kolkata
26.08.2021
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