

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 75 of 2014 (O&M)

Date of Decision: 22.9.2014

Commissioner, Central Excise Commissionerate, Panchkula
....Appellant

Versus

M/s Jyoti Sales Corporation, Tarori
...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE FATEH DEEP SINGH.**

PRESENT: Mr. Sukhdev Sharma, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 11.7.2014 (Annexure A-2) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal"), claiming the following substantial questions of law:-

- i) Whether the Tribunal is correct in granting indefinite stay of proceedings to the recovery of Govt. dues as adjudicated by the competent authority, contrary to the time limit prescribed under the provisions of the Central Excise Act, 1944?
- ii) Whether the impugned order passed by the Ld.

Tribunal is justified and in accordance with the provisions of law?

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. The assessee is engaged in the business of manufacture of parboiling, drying plants, parts and accessories for plants used for parboiling of paddy. The official of the department visited the factory premises of the assessee and resumed the records pertaining to the purchase of raw material and finished goods. A detailed investigation was conducted and it was found that the goods manufactured by the assessee were not exempted from the levy of excise duty and was liable to pay duties on their clearances beyond the exemption limit during the year 2008-09 and thereafter for the year 2009-10 (upto 1.7.2009). Accordingly, a notice dated 17.8.2009 was issued to the assessee to show cause as to why the excise duty amounting to ₹ 1,00,62,104/- along with interest and penalty be not levied. The adjudicating authority vide order dated 31.3.2010 confirmed the demand of duty along with interest and also imposed penalty of the equal amount. Feeling aggrieved, the assessee filed an appeal along with stay application before the Tribunal. The Tribunal vide order dated 8.4.2013 (Annexure A-1) allowed the stay application unconditionally while dispensing with the condition of pre-deposit of the entire amount of duty, interest and penalty. Thereafter, the revenue filed misc. application for vacation of stay order dated 8.4.2013 (Annexure A-1) before the Tribunal who vide order dated 11.7.2014 (Annexure A-2) dismissed the said application. Hence, the present appeal.

3. Learned counsel for the revenue submitted that the order

granting unconditional stay was bad as it was beyond the maximum period prescribed under Section 35C(2A) of the Central Excise Act, 1944. Support was drawn from the judgments of Delhi High Court in **Commissioner of Income Tax-II v. M/s Maruti Suzuki (India) Limited Writ Petition (Civil) No. 5086/2013** decided on 21.2.2014, Karnataka High Court in **The Commissioner of Income-Tax, Bangalore and another v. M/s Ecom Gill Coffee Trading Pvt. Ltd., Bangalore ITA No. 160 of 2012** decided on 5.7.2012 and Allahabad High Court in **Commissioner, Customs and Central Excise, Kanpur v. M/s J.P. Transformers, Kanpur CEA No. 277 of 2013** decided on 8.10.2013.

4. After hearing learned counsel for the appellant, we do not find any merit in the appeal. No doubt similar provision under Income Tax Act, 1961 or under this Act had been interpreted in favour of the revenue in the pronouncements cited by the learned counsel for the revenue. In the absence of any finding that the delay was attributed to the assessee, learned counsel for the revenue was not able to demonstrate that the assessee was responsible in delaying the decision of the appeal in any manner. Further, in **M/s Maruti Suzuki (India) Limited** and **M/s J.P. Transformers, Kanpur's cases (supra)**, the grant of *ad interim* stay was not vacated but the Tribunal was directed to decide the appeal expeditiously. However, in **M/s Ecom Gill Coffee Trading Pvt. Ltd., Bangalore's case (supra)**, the appeal before the Tribunal itself stood adjudicated during the pendency of the appeal in the High Court.

5. In view of the above, while disposing of the appeal, we direct the Tribunal to make sincere efforts for expeditious disposal of the

appeal preferably within six months from the date of receipt of certified copy of the order.

**(AJAY KUMAR MITTAL)
JUDGE**

**September 22, 2014
gbs**

**(FATEH DEEP SINGH)
JUDGE**