

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 19 of 2014 (O&M)

Date of Decision: 27.5.2014

M/s Dhiman Engineering Corporation, Faridabad

...Appellant.

Versus

Commissioner of Central Excise, Delhi-IV, Faridabad

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE ANITA CHAUDHRY.**

PRESENT: Mr. Jagmohan Bansal, Advocate for the appellant.

Mr. Sunish Bindlish, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Photo copy of receipt dated 12.5.2014 showing deposit of ₹ 20 lacs produced today is taken on record.

2. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short, "the Act") against the order dated 5.3.2014 (Annexure A-1) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (in short, "the Tribunal").

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is engaged in the manufacture of auto parts and for manufacturing auto parts, various dies, moulds, tools etc. were required. The appellant was manufacturing dies/moulds in the factory itself and using for the manufacture of the parts. As per notification dated 16.3.1995 (Annexure A-2), goods manufactured and captively consumed were exempted from

duty and as such, the appellant did not pay duty on die/moulds etc. used in the manufacture of finished goods. On 16.4.2009 and 18.5.2010, the premises of the appellant were inspected by the respondent. On being summoned by the respondent, the appellant appeared on 4.1.2011 and suffered the statement. On 19.4.2011, the premises of the appellant were visited and the record was resumed for further investigation. The statement of Sh. Haripal Dhiman was recorded on 4.7.2011 and on the same day, the appellant deposited ₹ 3 lacs vide cheque No. 540062 and ₹ 2 lacs vide cheque No. 540063. The respondent issued a notice dated 5.7.2011 to the appellant to show cause as to why duty amounting to ₹ 48,45,072/- (₹ 48,07,478/- BED, ₹ 96,149/- Education Cess and ₹ 41,455/- S&HE Cess) along with interest and penalty be not demanded after adjusting a sum of ₹ 5 lacs voluntarily paid towards duty liability. The appellant contested the said show cause notice on merits as well as on limitation. The adjudicating authority vide order dated 26.9.2012 (Annexure A-3) confirmed the duty and also imposed penalty of equal amount. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals), who vide order dated 6.6.2013 (Annexure A-4) upheld the order of the adjudicating authority and dismissed the appeal. Not feeling satisfied against the order of the Commissioner (Appeals), the assessee filed an appeal along with stay application (Annexure A-5) before the Tribunal. The Tribunal vide order dated 5.3.2014 (Annexure A-1) directed the appellant to deposit entire duty demand of ₹ 49,45,072/- along with interest except the amount already deposited by it. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the requirement of ₹ 49,45,072/- along with interest except amount already

deposited by the appellant as a pre-deposit as directed by the Tribunal was unfair and excessive. He, however, submitted that the appellant has already deposited a sum of ₹ 5 lacs towards the principal demand and thereafter, on a direction issued by this Court vide order dated May 2, 2014, the appellant has deposited another sum of ₹ 20 lacs. Thus, a total amount of ₹ 25 lacs stands deposited with the department.

4. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the amount as directed by the Tribunal was reasonable and justified.

5. The primary dispute that arises for consideration in this appeal relates to the quantum of pre-deposit to be made by the appellant as a condition precedent for the hearing of the appeal by the Tribunal. After hearing learned counsel for the parties and keeping in view the totality of the facts and circumstances of the case coupled with the fact that the appellant has already deposited a sum of ₹ 25 lacs, we are of the opinion that the ends of justice would be met if the Tribunal is directed to hear the appeal on merits without insisting for pre-deposit of the remaining amount. Ordered accordingly.

6. The appeal stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

May 27, 2014
gbs

(ANITA CHAUDHRY)
JUDGE