

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 67 of 2013 (O&M)

Date of Decision: 21.3.2014

M/s D.C. Steels Limited

...Appellant

Versus

The Commissioner of Central Excise, Ludhiana and another

...Respondents.

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

PRESENT: Mr. Rishab Kapoor, Advocate for the appellant.

Mr. Sukhdev Sharma, Advocate for the revenue.

AJAY KUMAR MITTAL, J.

1. 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 20.5.2013, Annexure A.7 passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (in short, "the Tribunal") in Excise Appeal No.E/55791/2013 directing the appellant to deposit Central Excise duty amounting to ₹ 25 lacs within four weeks as a pre-deposit in terms of Section 35F of the Act. Following substantial questions of law have been proposed for determination of this Court:-

- i) Whether the learned Tribunal is justified to order to the appellant to deposit the duty for hearing the appeal?
- ii) Whether the learned Tribunal is justified to order to

deposit when the appellant has strong prima facie case on merits as well as limitation?

- iii) Whether grave and palpable injustice would be caused to the appellant if the respondents are permitted to execute the legal order?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is registered as manufacturer of excisable goods i.e. non alloy steel ingots falling under Chapter 72 of the Central Excise Tariff Act, 1985. Acting on a specific information, the officers of Central Excise (Preventive) Ludhiana searched the premises of M/s J.S. Steel Traders on 26.8.2009 where its proprietor was not available. On 31.8.2009, the statement of Shri Jaspreet Singh, proprietor of M/s J.S. Steel Traders was recorded under Section 14 of the Act who stated that his firm was engaged in the business of trading of HR/CR sheet and end cutting of pcs and trimming scrap etc. and selling the goods to Addi Alloys and M/s DC Steel P Limited. On 10.9.2009, his statement was again recorded to the effect that the goods were being procured in open auction from big plants being rejects and they could be used in as raw material in local commercial market. Similarly on 28.6.2011, statement of Director of the assessee firm was recorded wherein he stated that they had been using waste and scrap of iron and steel both local and imported, sponge iron steel, ferro alloys were their main raw material. On 12.7.2011, the respondent issued show cause notice, Annexure A.1 proposing for denial of CENVAT credit of ₹ 98,57,263/- in terms of Rule 14 of the CENVAT Credit Rules, 2004 (in short, "the Rules") read with section 11A of the Act and also demanded interest and proposed to impose penalty in terms of

Rule 15 of the Rules read with Section 11AC of the Act. On 19.6.2012, the assessee submitted reply, Annexure A.2 to the notice rebutting the charges. The Commissioner of Central Excise vide order dated 1.11.2012, Annexure A.5 disallowed the Cenvat credit amounting to ₹ 98,57,263/- availed by the appellant and confirmed the demand of said wrongly availed cenvat credit. The demand of interest and penalty was also confirmed. Aggrieved by the order, the assessee filed appeal before the Tribunal alongwith stay application in terms of Section 35F of the Act. The Tribunal vide order dated 20.5.2013, Annexure A.7 directed the assessee to deposit duty amounting to ₹ 25 lacs within four weeks and report compliance on 24.6.2013. Hence the present appeal.

3. Learned counsel for the appellant submitted that the liability has been illegally fastened on the appellant. It was urged that the requirement of ₹ 25 lacs as a pre-deposit as directed by the Tribunal was unfair and excessive under the circumstances.

4. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the amount of ₹ 25 lacs 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, a sum of ₹ 15 lacs be deposited as a condition precedent for hearing of the appeal by the Tribunal which would meet the ends of justice.

6. The appeal stands disposed of accordingly.

7. A prayer was made by the learned counsel for the appellant

to grant the time for pre-deposit. In the interest of justice, we allow the appellant to deposit the amount of ₹ 15 lacs upto 15.5.2014. It is directed that if the appellant in the present case deposits the amount of ₹ 15 lacs by 15.5.2014, the appeal shall be heard on merits by the Tribunal in accordance with law.

**(AJAY KUMAR MITTAL)
JUDGE**

March 21, 2014
gbs

**(ANITA CHAUDHRY)
JUDGE**