

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CEA No.80 of 2013

Date of decision: October 28, 2013.

M/s Sagar Engineer Works

... **Appellant**

v.

Custom Excise and Service Tax Appellate Tribunal and another

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present: Shri Sudhir Malhotra, Advocate, for the appellant.

Shri Sunish Bindlish, Advocate for respondent No.2.

Dr. Bharat Bhushan Parsoon, J.

The appellant prays for setting aside order dated 20.05.2013 passed in the pending appeal by the Central, Excise & Service Tax Appellate Tribunal (hereinafter referred to as CESTAT whereby relief with respect to pre-deposit of the amount demanded by the Excise department, has been granted in part.

Counsel for the appellant submits that the appellant has been using the brand in question since 1976 and, therefore, the demand raised by the respondents is not only unwarranted but has been raised without application of mind or considering the entire material on record. It is prayed that the order requiring the appellant to deposit ₹30 lacs, is onerous as the appellant is a small scale unit and cannot possibly deposit ₹30 lacs. In case the appellant deposits ₹30 lacs, it would irretrievably impair the appellant's business.

Counsel for the respondent submits that the impugned order is neither illegal or void nor does it require interference. It is further submitted that as the appellant has already been granted a concession by the Tribunal, the appeal should be dismissed.

We have heard counsel for the parties, perused the impugned order as well as examined the controversy on merits but are of the opinion that the appellant has not been able to make out a case for stay of the entire amount demanded by the respondent.

As is apparent from the impugned order, the Tribunal has already reduced the amount of pre-deposit to ₹30 lacs but while doing so considered that the appellant is a small scale unit and payment of sum of ₹30 lacs would necessarily impair the financial well-being of the unit. In a similar case, relief has already been given to some extent. Maintaining parity, we, therefore, allow the appeal in part, modify the impugned order and direct the appellant to deposit ₹20 lacs on or before the date of appearance before the CESTAT.

Parties are directed to appear before the CESTAT on 10.12.2013. The CESTAT shall decide the pending appeal within four months from the aforesaid date.

[Dr. Bharat Bhushan Parsoon]
Judge

[Rajive Bhalla]
Judge

October 28, 2013.
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