

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

CEA No.83 of 2013 (O&M)
Date of decision: September 10, 2013.

M/s Amba Poly Chrome (P) Ltd.

... **Appellant**

v.

Commissioner of Central Excise and another

... **Respondents**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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

Present: Shri Jagmohan Bansal, Advocate, for the appellant.
Shri Sukhdev Sharma, Advocate for the respondent.

Dr. Bharat Bhushan Parsoon, J.

In the instant appeal, the appellant is aggrieved by order dated 9.7.2013 passed by the Customs, Excise and Service Tax Appellate Tribunal whereby stay application filed by the appellant (against recovery of Rs.35,01,028/- and an equal amount of penalty imposed upon it by the Original Authority and confirmed by Commissioner [Appeals]), was disposed of with a direction to pay the entire amount of duty along with interest and only on due compliance, recovery of penalty was stayed.

The appellant is registered with the respondent-Department and is engaged in the manufacture of HDPE fabric/bags and is also availing Cenvat credit of the duty paid on inputs in terms of Cenvat Credit Rule, 2004. During audit of the

records, it was found by the Department that the appellant had been procuring polypropylene granules from M/s Reliance Industries Limited, a 100% export oriented unit, for use in the manufacture of their finished goods and availed full Cenvat credit of all the duties paid by it. The appellant was required to take credit calculated in terms of Rule 3(7)(a) of the Credit Rules as prevalent during the period in question. On being pointed out, an amount of Rs.5,67,730/- was deposited by the appellant along with interest of Rs.67,656/-. The appellant was served with a show cause notice to deposit excess credit availed to the tune of Rs.37,81,186/- with interest and penalty contemplated under Rule 15 of the Credit Rules. The adjudicating authority, however, confirmed demand of Rs.35,01,028/- (besides ordering adjustment of Rs.5,67,730/- already paid by the appellant) only along with interest and penalty equivalent to the demand confirmed under Rule 15 of the Credit Rules read with Section 11AC of the Central Excise Act, 1944 (in short, the Act).

The appellant preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal accompanied with an application for stay of the orders passed by the original authority as also confirmed by the Commissioner (Appeals). The Customs, Excise and Service Tax Appellate Tribunal held that in terms of Rule 3(7)(a) of the Cenvat Credit Rules, 2004, the appellant was not eligible for availing credit qua entire duty paid by the supplier of the goods.

The Tribunal then had directed the appellant to deposit the entire duty along with interest (after adjusting the deposit already made) within eight weeks of the order in terms

of the statutory provisions and stay of penalty had been granted only subject to compliance of the aforesaid condition.

Counsel for the appellant contends that the appellant is in extreme financial distress and therefore, is not in a position to pay the entire amount of duty along with interest. He has, therefore, prayed that keeping in view this aspect of the matter, the Court should dispense with the condition of pre-deposit of entire amount of duty and interest and instead liberty be granted to the appellant to deposit 50% of the amount of pre-deposit after adjusting the amount already paid.

It is further argued that the demand is clearly time barred as the appellant's account books and record were duly checked and audited by the respondents in 2008 thereby raising an inference that no discrepancy was found. The show cause notice issued on 18.2.2011 by invoking the extended period of limitation is, therefore, not warranted and should have been considered by the Tribunal as reason enough to stay the demand raised by the revenue.

Counsel for the respondent, on the other hand, contends that the respondents have not found any case of financial hardship. This apart, it has been held that the demand is not time barred and the appellant was not entitled to claim Cenvat credit etc., the order declining the relief under Section 25-F of the Act is legal and valid.

We have heard counsel for the parties and perused the paper book and the relevant provisions of law.

The contentions raised by the appellant *prima facie* raise an inference that there is an arguable point, particularly, when the account books and documents were audited and

checked in 2008 by the respondent-Department and no discrepancy was detected. The question whether the respondents are justified in invoking the extended period of limitation, is a matter to be determined in appeal. This apart, the question whether the appellant has suppressed facts from the Department or evaded payment of duty, are other factors that would require consideration by the Tribunal. The learned Tribunal, in our considered opinion, should have, therefore, granted relief to the appellant with respect to demand of the amount determined by the respondents.

Consequently, the appeal is disposed of with a direction to the appellant to deposit 50% of the amount of duty (after adjusting the amount already paid) within a period of one month and upon compliance thereof, there shall be stay on the recovery of remaining amount of duty and interest.

[Dr. Bharat Bhushan Parsoon]
Judge

September 10, 2013.
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[Rajive Bhalla]
Judge