

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.**

**CEA No.43 of 2013 (O&M)  
Date of Decision: July 25, 2013.**

**M/s Shirdi Overseas Imports & Exports**

.....Appellant

Vs.

**The Commissioner of Central Excise and another**

.....Respondents

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

Present: Mr. Rajesh Garg, Advocate for the appellant.

Mr. Sukhdev Sharma, Advocate for the respondents.

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**DR. BHARAT BHUSHAN PARSOON, J. (Oral)**

Aggrieved by the order dated 28.04.2010 passed by the Commissioner of Central Excise, Ludhiana, whereby the appellant had been called upon to make deposit of ₹ 78,89,700/- as duty alongwith interest and penalty of the same amount, the appellant had challenged the same before the Central Excise and Service Tax Appellate Tribunal, New Delhi. An application for staying operation of the impugned order had also been made therein.

Deciding the said stay application, vide its order dated 27.08.2012 the Appellate-Tribunal had directed the appellant to deposit an amount of ₹ 55,00,000/- as a condition precedent for staying the impugned order and for hearing the appeal on merits.

Aggrieved with this order, the appellant has sought intervention of this Court claiming it to be a case of undue hardship to it. It is alleged that the revenue had conducted a raid in the premises of the appellant and had resumed all records and documents relating to proof of its exports of man-made-fabric of the period from 2.03.2006 to 20.03.2006, whereas no opportunity had been provided to the appellant to set up its case. Appellant has referred to the documents in a bid to show that it was not a case of fake or wrong exports.

Plea of the respondent per contra is that going into the aspects of alleged undue hardship claimed by the appellant, the Tribunal has already been very considerate and had granted sufficient relief to it.

The short question that arises for adjudication, at this stage is whether the appellant has been able to make out a case of undue hardship before us to stay the demand raised by the respondent? The appeal will be heard and decided on merits of the case and thus matters in dispute on merits are not to be gone into.

While rival contentions of the parties are evaluated while considering attendant facts and circumstances, the Tribunal had rightly come to a conclusion that it was not a case of total waiver and that conditions were required to be imposed for safeguarding the interests of the Revenue. While accepting the Tribunal's finding we find that it is not a case for complete waiver.

However, we find that the appellant is entitled for some relief as there are no convincing facts and circumstances requiring the

appellant to make a pre deposit of disproportionate amount of ₹ 55,00,000/- out of the duty demand of ₹ 78,89,700/- particularly when in stay Application No.1955 of 2009, filed in Excise Appeal No.1899 of 2009 of the same appellant, the Tribunal had considered it appropriate to direct deposit of only 50% of the duty demand against the appellant.

Following the same approach, modifying the impugned order of the Tribunal, the appellant is called upon to make deposit only of 50% of the duty demand against him in parity with the order of the Tribunal in the connected appeal.

Sequelly, partly accepting the appeal to the extent as mentioned earlier, appeal qua rest of the claim, is dismissed.

**(DR. BHARAT BHUSHAN PARSOON)**  
**JUDGE**

**July 25, 2013**  
Manoj Bhutani

**(RAJIVE BHALLA)**  
**JUDGE**