

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

**CEA No.44 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.

DR. BHARAT BHUSHAN PARSOON, J. (Oral)

Commissioner of Central Excise, Ludhiana had confirmed duty demand of ₹ 6,65,04,716/- with interest and had also imposed a penalty of ₹ 6,06,80,873/- against the appellant. This order was challenged by the appellant before the Tribunal by way of an appeal. Alongwith the appeal an application for stay was also filed. On the stay application an order dated 18.04.2012 was passed by the Commissioner of Central Excise, Ludhiana.

Said order dated 18.04.2012, passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, on an application for stay whereby the appellant had been called upon to deposit 50% of the duty demand against him within 8 weeks as a condition precedent

for hearing its appeal before the said Tribunal, thus is under challenge.

It is claimed that order of the Tribunal is harsh as it did not take into account the undue hardship of the appellant as also the fact that the appellant has a prima facie case when the impugned Cenvat credit was availed by it only after the details were duly verified by the Central Excise Department. It is alleged that the appellant is suffering from financial crunch but has been asked to make pre-deposit as a condition precedent for hearing the appeal and for staying the impugned order, resulting in great and manifest injustice to it.

During the course of arguments, learned counsel for the appellant has claimed that the Cenvat credit of ₹ 6,92,48,992/- had been availed by the appellant on the receipt of inputs and packing material during the period i.e. October 2005 to June 2006 but in June 2006 the revenue had initiated an inquiry suspecting fraudulent availment of Cenvat credit. It is further averred that without going into the facts and circumstances of the case and alleging it to be a case of fraudulent availment of Cenvat credit on fake invoices i.e. without actual receipt of goods, demand was confirmed and penalty was imposed.

Counsel for the respondent submits that there is no error in the impugned order as concession regarding pre-deposit has already been granted to the appellant. The short question that arises for adjudication is as to 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 by the concerned Tribunal. Merits of the dispute thus are not to be gone into

by this Court.

Perusal of the impugned order reveals that keeping in view the facts and circumstances prevailing at the business front of the appellant, the Tribunal, finding it to be a case of undue hardship, has already given considerable relief while directing the appellant to deposit only 50% of the duty demand against him.

The appellant has not been able to point out any other circumstance muchless material making out a case for complete waiver of the demand. The appellate Tribunal was right in coming to a conclusion that it was not a case of complete waiver of the demand.

There is no infirmity in the impugned order, we find no merit in the appeal. Confirming the impugned order, the appeal is therefore, dismissed.

(DR. BHARAT BHUSHAN PARSOON)
JUDGE

July 25, 2013
Manoj Bhutani

(RAJIVE BHALLA)
JUDGE