CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

Customs MiscAppln. No. 60356 of 2021&
Customs MiscAppln. No. 60036 of 2022
in
Customs Appeal No. 658 of2010

(Arising out of Order-in-original no. 13/Cus/2010 dated 17.09.2010 passed by the Commissioner Adjudication, Amritsar)

M/s. Devinder Singh Narang
Partner, M/s. Simran Bright Bar Inds.
K-15, Focal Point,
Phase VII,
Ludhiana **Appellant**

VERSUS

Commissioner of Customs, Amritsar **Respondent**
CR Building, Mall Road, Amritsar

APPEARANCE:

None for the Appellant
Mr. Rajeev Gupta, Pr. Commissioner & Shri SourabhGoel, Spl. Counsel, AR for the Respondent

CORAM:

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. 60136/2022

Date of Hearing: 26.04.2022
Date of Decision: 12.10.2022

AJAY SHARMA:

None for the Appellant. This appeal has been filed by Appellant challenging the Order-in-original No.13/Cus/2010 dated 17.09.2010 passed by the Commissioner Adjudication, Amritsarimposing a penalty of Rs.3.5 crores on the appellant.

2. We have heard learned Special counsel alongwith learned Authorised Representative appearing for Revenue in the matter and perused the case records with their assistance. The aforesaid impugned order was challenged by the Appellant in the instant Appeal before this Tribunal and vide its order dated 03.06.2011 the Tribunal directed the Appellant to deposit Rs.50 Lacs within a period of 12 weeks as a condition for hearing the appeal in terms of provisions of Section 35F of the Central Excise Act, 1944 out of the penalty of Rs.3.5 crores which has been challenged by him in the Appeal. The said order specifically recorded that *"We make it clear that non-deposit of the above directed amounts would result in automatic dismissal of the appeals without any further notice to the appellants."*

3. The Appellant did not deposit the amount and filed the application for modification of order before this Tribunal but the same was dismissed vide order dated 17.01.2012 and in the interest of justice the period to make pre-deposit was further extended by six more weeks by the Tribunal. Thereafter, instead of making pre-deposit the Appellant challenged the said orderof the Tribunal before the Hon'ble High Court of Punjab & Haryana at Chandigarh being CWP No. 3426 of 2012 and ultimately the same was dismissed by the Hon'ble High Court vide order dated 30.01.2013 with liberty to the appellant to avail the remedy of appeal against the order of the Tribunal.

4. Thereafter the Appellant filed Appeal against the order of pre-deposit before the Hon'ble High Court vide CUSAP No.1 of

2013 (O&M) which was also dismissed by the Hon'ble High Court vide order dated 29.5.2013 with the observation that the pre-condition of deposit of Rs.50 lacs calls for no interference by the Hon'ble High Court. The said order of the Hon'ble High Court is as under:-

"*<u>CUSAP Nos.1 and 2 of 2013 (O&M)</u>*

This order shall dispose of two appeals bearing CUSAP Nos. 1 and 2 of 2013 as similar questions of law and facts are involved in the same. For brevity, the facts are being extracted from CUSAP No. 1.

This Custom Appeal is directed against the order dated 17.1.2012 (Annexure A-1), passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal), dismissing the appellant's application to modify its previous order dated 3.6.2011 (Annexure A-2). Vide order dated 3.6.2011, the appellant was directed to deposit₹50 lacs as a pre-condition for the hearing of his appeal, in terms of Section 35-F of the Central Excise Act, 1944 (for short 'the Act'), out of the penalty of ₹3,50,00,000/- which is under challenge in the appeal.

The Tribunal has observed that the appellant deliberately participated in the fraud of exporting firms, by facilitating the issue of invoices, on commission basis, without the actual issuance of goods.

The Tribunal has, however, found that prima facie the appeal preferred by the appellant requires consideration and on consideration of the total amount of penalty, the Tribunal has directed the appellant to deposit ₹ 50 lacs as a pre-condition in *terms of Section 35-F of the Act for the hearing of his appeal.*

In the light of principles laid down by Hon'ble Supreme Court in ***Benera Valves Ltd****. Vs.* ***Commissioner of Central Excise****, (2006) 13, SCC 347 and* ***Indu Nissan Oxo Chemicals Ind. Ltd Vs. Union of India (UOI) and others****, (2007) 13 SCC 487, to draw balance between 'undue hardship' viz.a.viz. the 'interest of the revenue', we are satisfied that the pre-condition of deposit of ₹ 50 lacs, calls for no interference by this Court.*

For the reasons afore-stated, both the appeals stand dismissed.

(SURYA KANT)
JUDGE

(R.P. NAGRATH)
JUDGE"

5. Against the aforesaid order of the Hon'ble High Court, the Appellant filed Petition for Special Leave to Appeal before the Hon'ble Supreme Court being S.L.P. (C) No. 29182-29183 of 2013 and the same was also dismissed by the Hon'ble Supreme Court vide order dated 27.9.2013 but while dismissing the SLP, the Hon'ble Supreme Court extended the time to deposit the amount of Rs.50 lacs upto 31.10.2013. The said order of the Hon'ble Supreme Court is also extracted hereunder for ready reference:-

"ITEM NO.27 COURT NO.12 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).29182-29183/2013

(From the judgement and order dated 29/05/2013 in Customs Appeal Nos.1&2 of 2013 (O&M) of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

DEVINDER SINGH NARANG ETC. *Petitioner(s)*

VERSUS

COMMISSIONER OF CUSTOMS AMRITSAR(PUNJAB) *Respondent(s)*

(With appln(s) for permission to file additional documents and exemption from filing legible copies of dim annexures and with prayer for interim relief)

Date: 27/09/2013 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ANIL R. DAVE
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) *Mr. AlokYadav,Adv.*
Mr. M.P. Devanath,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

The Special Leave Petitions are dismissed.

However, the time to deposit the amount by way of pre-deposit, shall stand extended upto 31st October, 2013.

(Sarita Purohit) *(SnehBalaMehra)*
Court Master *Court Master"*

6. On behalf of Revenue it has been submitted that despite the extension of time granted by the Hon'ble Supreme Court, the

Appellant failed to comply with the order of pre-deposit of Rs.50 lacs. We have seen the case records and find that time and again the appellant has been directed to make pre-deposit but till now he has not complied with the directions. We deplore this conduct of the appellant. Firstly Hon'ble High Court and thereafter Hon'ble Supreme Court have confirmed the order of this Tribunal regarding the pre-deposit of amount of Rs.50 lacs but despite that since last 11 years the appellant deliberately did not deposit the amount.

7. When a person has no respect for the order of the highest Court of the land then what to talk of the Tribunal. Such persons don't deserve any leniency. The intentions of the appellant were very clear since the very first day when this Tribunal has passed the order of pre-deposit on 03.06.2011. He made so many unsuccessful attempts not to comply with the order of pre-deposit and went upto Hon'ble Supreme Court and when the Hon'ble Supreme Court was not inclined to disturb the order of the Tribunal then the Appellant prayed for extension of time for pre-deposit which was granted by the Hon'ble Supreme Court and time was extended upto 31.10.2013, while dismissing his SLP. But despite that he has not made the pre-deposit till date and more than 11 years have gone by from the date of the order of Tribunal.

8. From the facts of the case as we can see from the case records, it is clear that the appellant is deliberately not depositing the amount of Rs.50 lacs despite getting extension of

time to deposit from the Hon'ble Supreme Court. We are also aware of the fact that initially this Tribunal while ordering for pre-deposit in the year 2011 had specifically observed that non-deposit of the amount would result in automatic dismissal of the appeals without any further notice to the appellants but still so many opportunities were granted to the appellant to deposit the amount but of no avail. Such a contumacious conduct of the appellant cannot be tolerated.

9. Therefore in the facts of the instant case we have left with no other option but to dismiss the Appeal filed by the Appellant for non-compliance of the order of this Tribunal as affirmed by the Hon'ble Supreme Court. The Appeal is accordingly dismissed.

(Pronounced in the open court on 12.10.2022)

(AJAY SHARMA)
Member(Judicial)

(P.V. SUBBA RAO)
Member(Technical)