IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

E/MA-506/2011
In
Appeal No. E/103/2009

(Arising out of Order-in-Original No. 11/Commissioner/CE/Kol-IV/2008 dated 23/12/2008 passed by Commissioner of Central Excise, Kolkata-IV.)

M/s. Star Battery Ltd. — Appellant (s)
Vs.
CCE-Kol-IV — Respondent (s)

Appearance
Shri S. P. Siddhanta, Consultant for the Appellant
Shri S. Mukhopadhyay, Suptd. (A.R.) for the Revenue
CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing-27.11.2018
ORDER NO. FO/77013/2018

Per Bench

The present Miscellaneous Application has been filed by the appellant praying for re-calling the Miscellaneous Order 214/KOL/2011 dated 17/11/2011 passed by this Tribunal. Vide the order dated 17/11/2011, the Tribunal decided the Miscellaneous Application filed by the appellant for re-calling the earlier order dated 24/05/2010, through which the appeal filed by the appellant was dismissed for non-compliance of the conditions of the Stay Order. It is pertinent to record that the Tribunal vide its Stay order dated 15/03/2010, directed the appellant to deposit the dues as per the Adjudication Order as a condition for hearing the appeal.

2. Vide the present Miscellaneous Application, the appellant has submitted that due to general recession affecting the market, the

company had been facing the financial difficulty and hence was unable to make the pre-deposit as ordered by the Tribunal.

3. We note that the appeal bearing No. E/103/2009 was filed by the appellant challenging the impugned order dated 23/12/2008. Stay Petition SP-140/2009, had also been filed by the appellant. After consideration of the stay petition, the Tribunal vide the order 15/03/2010 had directed the appellant to deposit the dues as per the Adjudication Order.

4. To a specific query from the Bench, S. P. Siddhanta, Ld. Consultant submitted that the appellant was unable to make the pre-deposit as ordered earlier but he prayed for restoration of the appeal.

5. The Ld. DR pointed out that the appeal had been dismissed for non-compliance of the Stay Order and as such cannot be re-stored until and unless the pre-deposit has been made as ordered by the Tribunal.

6. In view of the fact that the appellant has failed to comply with the Stay order of the Tribunal dated 15/03/2010, we find no reason to re-call our earlier order. Miscellaneous Application stands dismissed.

(Dictated and Pronounced in the Open Court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja