

2013 (2) ECS (3 ) (Kar-HC)

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE  
DATED THIS THE 11<sup>TH</sup> DAY OF JANUARY, 2013  
PRESENT  
THE HON'BLE MR.JUSTICE D V SHYLENDRA KUMAR**

**AND**

**THE HON'BLE MR.JUSTICE B MANOHAR**

**M/S KARNATAKA AGRO CHEMICALS**

**VERSUS**

**THE COMMISSIONER OF CENTRAL EXCISE, BANGALORE**

**CEA Nos. 41 - 52 of 2012**

BETWEEN:

**M/S KARNATAKA AGRO CHEMICALS**

REP. BY ITS PARTNER MR MAHESH G SHETTY

[By Sri G Sridhar, Adv. for M/s. Indus Law, Advs.]

APPELLANT

AND:

**THE COMMISSIONER OF CENTRAL EXCISE, BANGALORE**

RESPONDENT

[By Sri N R Bhaskar, Sr. CGSC]

THESE CEAs ARE FILED UNDER SECTION 35G OF THE CENTRAL EXCISE ACT, 1944 PRAYING TO SET ASIDE THE ORDER DATED 02.02.2012 PASSED IN TRIBUNAL BEARING NO. 187- 198/2011 VIDE ANNEXURE - A AND MODIFIED AS PER ORDER DATED 28.05.2012 PRODUCED AS ANNEXURE - B AND GRANT COMPLETE WAIVER OF PRE-DEPOSIT IN RESPECT OF THE DEMAND OF RS. 26,16,00,751/- (RUPEES TWENTY SIX CRORE SIXTEEN LAKHS SEVEN HUNDRED FIFTY ONE ONLY) ORDER OF THE RESPONDENT DATED

30.03.2010/31.03.2010 PRODUCED AS ANNEXURE - K, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THESE CEAs COMING ON FOR ORDERS, THIS DAY, SITYLENDRA KUMAR, J., MADE THE FOLLOWING:

**“In the revenue matters, Supreme Court has time and again said granting stay should be an exception and not a rule. However, under the provisions of the Act, pre-deposit is a rule and dispensation is an exception in terms of Section 35G of the Act” [Para 11]**

### **ORDER**

1. These appeals are preferred under Section 35G of the Central Excise Act, 1944, (for short 'the Act') by the assessee, who is in appeal before the Tribunal under Section 35B of the Act in appeal Nos. E/1364 to 1375/2010 has come up for orders before us on I.A.No. IV/2012 moved by the respondent seeking for vacating the ex-parte interim order of stay granted by this Court on 12.10.2012
2. We have heard Mr. G. Sridhar, learned counsel appearing for the appellant and Mr.N.R. Bhaskar, learned Sr. CGSC appearing for the respondent - the Commissioner of Central Excise, Bangalore.
3. Appeals though purporting to be under Section 35G of are those directed against the order dated 10.02.1012 passed by the Tribunal on Stay Application Nos. E/STAY/785 TO 796/2010 pending appeals in Appeal No. E/1364 to 1375/2010 before the Tribunal was an application under Section 35F of the Act for waiver of the amount in deposit, which was the subject matter of appeals and which was without any dispute of the value of Rs.26,00,00,000/- . The Tribunal on examination of the application passed the order in favour of the appellant and dispensed with the pre-deposit of the amount over and above Rs.5,00,00,000/- i.e., to the extent of Rs.21,00,00,000/- deposit was dispensed with and the Tribunal directed the appellant to deposit only a sum of Rs.5,00,00,000/- after examining the application and further material placed by the assessee before the Tribunal and also taking into consideration the financial position of the assessee.
4. The Tribunal in terms of the order also granted eight weeks time to comply with the order and it was made a condition that it is subject to the compliance of this direction to deposit the sum of Rs.5,00,00,000/- (Rs. Five Crores only) waiver of

pre-deposit of the penalty imposed on the assessee and the balance amount of the tax liability will operate.

5. The appellant deposited only Rs.50,00,000/- (Rs. Fifty Lakhs only ) within the permitted time and made Misc. application Nos.433-444/2012 seeking for extension of time, the Tribunal in terms of its order dated 28.05.2012 acceded to the request of the appellant and granted further eight weeks time there from for deposit of balance amount of Rs.4,50,00,000/- as per the earlier order.
6. The appellant has not deposited the amount before the Tribunal so far. Instead the appellant had come up before this court by filing W.P.Nos.25196 & 25305-315/2012 (CESTAT). However, the writ petitions were disposed off by this court by order dated 22.09.2012 granting liberty to the appellant to prefer appeals. It is in this background the present appeals are preferred and this court in terms of the order dated 12.10.2012 granted interim stay. It is thereafter the respondent – revenue after having been served has come up with the application I.A.IV/2012 for vacating the order of stay.
7. At the request of learned counsel for the parties, these appeals are taken up for final disposal having regard to the limited scope involved in these appeals. The appeals are preferred only against an order passed on the applications under Section 35F of the Act seeking for waiver of pre-deposit. We notice that the Tribunal itself in fact had granted waiver to the extent of Rs.21,00,00,000/- which was the requirement of deposit and directed the appellant to deposit only a sum of Rs.5,00,00,000/- and time of eight weeks for deposit of the amount had also been granted. The assessee did not question this order at that time, on the other hand, the assessee went before the Tribunal seeking for further extension of time, that was also accepted. It is thereafter the assessee has come up with the writ petitions and now in appeals.
8. Submission of Mr. Sridhar, learned counsel for the appellant is that the Tribunal has not at all taken note of the financial position of the assessee and prima facie case of the subject matter of the appeal and therefore, submits that the order warrants interference and also places reliance on the judgment of the Supreme court in the decision of BENARA VALVES LTD. AND OTHERS Vs. COMMISSIONER OF CENTRAL EXCISE AND ANOTHER reported in (2006) 13 Supreme Court Cases 347. At paragraphs 11 and 12 of this judgment is the discussion about the scope of an application under Section 35F of the Act, particularly, the expressions of "undue hardship" and "safeguard the interest of the Revenue" which has to be balanced by the Tribunal while passing orders on the application seeking for waiver of pre-deposit. Further submission of Mr. Sridhar, learned counsel is that the defects and likelihood of prejudice and injury

that would be caused to the appellant for insisting on pre-deposit and also the possibility that due to financial constraints the appellant being unable to make pre-deposit of the amount in question that also virtually disentitle the right of appellant etc.

9. On the other hand, Mr. Bhaskar, learned Sr. CGSC has brought to our notice the order passed by the Tribunal, particularly, at paragraph Nos.5 and 6 wherein the Tribunal has considered the prima facie case and has also looked into the financial position of the assessee, as indicated at paragraph No.6. The Tribunal was of the opinion, that there was not much prima facie case, noticing the financial position as on 31.03.2011. And it is because of this reason the Tribunal ordered deposit of only Rs.5,00,00,000/- and not the entire amount of Rs.26,00,00,000/- as per the requirement of Section 35F of the Act. Proviso came to the rescue of the assessee for waiver of deposit of Rs.21,00,00,000/-.
10. While we find the judgment of the Supreme Court is not attracted to the facts of the case, as the Tribunal considering the prima facie nature of the appeal has also examined the financial position of the assessee. We also find that the conduct of the assessee in seeking an order under Section 35F of the Act taking the benefit of an order and further seeking extension of time and later on turning around and filing writ petitions and appeals under Section 35G of the Act is neither bona fide conduct nor one to be encouraged.
11. In the revenue matters, Supreme Court has time and again said granting stay should be an exception and not a rule. However, under the provisions of the Act, pre-deposit is a rule and dispensation is an exception in terms of Section 35G of the Act and in the present case, while on merits substantial relief had been granted by the Tribunal, it is not as though the assessee was not granted any relief at all. The assessee itself having accepted the order had sought for further time to deposit balance amount of Rs.4,50,00,000/- which has not been deposited till now.
12. It is in this background, we find no occasion to interfere in a matter of this nature and therefore, we find no occasion to either continue the interim order or retain these appeals on board. Interim order dated 12.10.2012 is vacated. Accordingly, these appeals are dismissed. However, we grant four more weeks time to deposit the balance amount of 4,50,00,000/- before the Tribunal.

13. In view of the main appeals itself having been dismissed, I.A.II/2012 for condonation of 65 days delay does not survive for consideration, it is accordingly dismissed.