

HIGH COURT OF SIKKIM
Record of Proceedings

WP(C) NO. 20 OF 2018

M/S SIKKIM ORGANICS

PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

RESPONDENT

Date: 04.03.2019

CORAM:

**HON'BLE MR JUSTICE VIJAI KUMAR BIST, CJ.
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.**

For Petitioner : Mr. A.K. Upadhyaya, Sr. Advocate
with Mr. Sonam Lepcha, Advocate

For Respondent : Mr. B.K. Gupta, Advocate

.....

Chief Justice

Heard learned counsel for the parties.

2. Petitioner is a registered partnership firm having its principle place of business at Manpur, Sumbuk Block, South Sikkim and is engaged in the business of manufacture of industrial chemicals. On 08.04.2016, a show cause-cum-demand notice was served upon the petitioner by the Commissioner of Customs, Central Excise and Service Tax, Siliguri Commissionerate, Siliguri. The petitioner on receipt of the said show cause-cum-demand notice, submitted a reply on 30.06.2016. Thereafter, on 06.02.2017, an order was passed by the Commissioner of Customs, Central Excise and Service Tax Siliguri

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Commissionerate, Siliguri, imposing penalty and directions to the petitioner to pay the demand.

2. Against the said order, an appeal was preferred by the petitioner before the Customs, Excise & Service Tax Appellate Tribunal, Kolkata. Since the petitioner did not deposit the compulsory pre-deposit as required under section 35F of the Central Excise Act, 1944 (hereinafter referred to as 'the Act'), the appeal preferred by the petitioner was dismissed. Following order was passed by the learned Appellate Tribunal on 21.08.2017;

".....

List revised. None present on behalf of the appellant. Heard the Id. A.R. for the Department.

2. Shri A.K. Biswas, Ld. Counsel for the Department submits that pre-deposit is mandatory as per the statute.

3. In view of the above, it is evident that the appellant has not made any attempt to make compulsory pre-deposit as required by statute. When it is so, then appeal filed by the appellant is not maintainable (*sic*).

4. In the result, the appeal filed being not maintainable (*sic*) and is dismissed. M.A. (COD) is also dismissed.

....."

3. Learned counsel for the petitioner submitted that penalty could not be deposited as the petitioner received the notice on appeal after the date of hearing. This submission of learned counsel for the petitioner is totally misconceived as it was the petitioner who himself filed the appeal before the Tribunal and therefore, the petitioner was having knowledge of the date fixed. We also find that

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when the petition was filed before this Court, the counsel for the petitioner submitted before the Court that in case one more opportunity is given to the petitioner to make good the deficiency, the pre-requisite deposit could be made. Though, no such liberty was granted to the petitioner but we find that till date the petitioner has not taken any steps to deposit the amount.

4. Section 35F of the Act provides that the Appellate Tribunal shall not entertain any appeal against the decision or order passed by the Commissioner of Customs, Central Excise and Service Tax, unless the appellant has deposited seven and a half per cent of the duty and penalty as imposed.

5. In the case of the petitioner, while filing the appeal before the Appellate Tribunal, the petitioner did not deposit the amount as required by Section 35F of the Act. Therefore, in our view, the learned Appellate Tribunal has not committed any error in dismissing the appeal.

6. Consequently, this writ petition stands dismissed.

Judge
04.03.2019

Chief Justice
04.03.2019

Index : Yes / No
Internet : Yes / ~~No~~
js/ds/bp