Court No. - 42

Case :- CENTRAL EXCISE APPEAL DEFECTIVE No. - 8 of 2023

Appellant :- M/S Madhyamik Shiksha Parishad
Respondent :- Customs Excise And Service Tax Appellate And Another
Counsel for Appellant :- Nimai Dass
Counsel for Respondent :- Gaurav Mahajan

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Rajendra Kumar-IV,J.

Re: Civil Misc. Delay Condonation Application No. 2 of 2023

1. Heard Sri Rajan Srivastava, learned counsel for the appellant and Sri Amit Mahajan, learned counsel for the revenue.

2. The present appeal has been filed with a delay of 147 days. Subject to payment of cost Rs. 10,000/- to the High Court Legal Services Committee by 15.06.2023, delay in filing the present appeal is condoned. Delay condonation application is **allowed**.

Order on Appeal

3. Present appeal has been filed under Section 35-G of the Central Excise Act, 1944 (hereinafter referred to as the 'Act') arising from the order dated 02.08.2022 passed by the Customs, Excise & Service Tax Appellate Tribunal, Allahabad, Regional Bench in Defect Diary No. 702572021 (M/s Madhyamik Shiksha Parishad Vs. Commissioner, Central Tax, GST & Central Excise, Allahabad). By that order, the Tribunal has rejected the appeal filed by the present appellant against the order (in appeal) dated 12.01.2021 passed by the Commissioner (Appeals), CGST and Central Excise, Allahabad.

4. The only reason to dismiss the appeal (as disclosed in the impugned order), is non-compliance of the mandatory requirement of Section 35-F of the Act with respect to pre-deposit to maintain the statutory appeal.

5. While there is no dispute that the right of appeal claimed by

the appellant before the Tribunal was conditional inasmuch as such appeal may be maintained only upon making pre-deposit prescribed by the statute, at present, learned counsel for the appellant prays for some time to make the pre-deposit to maintain the appeal before the Tribunal.

6. Undisputedly, the appellant is a statutory board constituted by the Government of U.P. In such circumstance, upon query made, Sri Amit Mahajan, learned counsel for the revenue fairly states, if the present appellant were to make good the deposit within a period of one month from today, the revenue would have no objection to the impugned order being set aside so as to allow the appellant to press its appeal on merits.

7. In view of such statement made, no useful purpose would be served in seeking to decide the legal issues being raised.

8. Accordingly, the present appeal is **disposed of** with the observation, in case the appellant pays the cost, as above and, deposits the pre-deposit amount to maintain its appeal on or before 30.06.2023, the impugned order dated 02.08.2022 shall stand set aside and the appeal would revive before the Tribunal, to be heard and decided on merits.

Order Date :- 25.5.2023
Abhilash

(Rajendra Kumar-IV, J.) **(S. D. Singh, J.)**