

Stay/Dispensation of pre-deposit — Export Oriented Unit, 100% EOU — Diversion of duty free raw material to DTA

The Gujarat High Court Bench comprising Hon'ble Mr. Acting Chief Justice Bhaskar Bhattacharya and Hon'ble Mr. Justice J.B. Pardiwala on 18-4-2012 **dismissed** the Tax Appeal No. 2521 of 2010 with T.A. Nos. 1692 & 2522-2523 of 2010 filed by Prime Ployweave Ltd. against the CESTAT Stay Order Nos. S/46-67/2009-WZB/AHD, dated 7-1-2009 as reported in **2010 (253) E.L.T. 653 (Tri.-Ahmd.) (Mukesh Ram Nivas Gupta v. Commissioner)**. While dismissing the appeals, the High Court passed the following oral order :

"These Appeals at the instance of the assessee under Section 35G of the Central Excise Act, 1944 are directed against order dated January 7, 2009 passed by the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad Zonal Bench, Ahmedabad, whereby, the Tribunal disposed of the applications for waiver of pre-deposit and applications for stay against recovery during pendency of the appeals by directing the assessee to pay only 5% of the total duty demanded or 4% of the duty plus penalty.

Being dissatisfied, the assessee have come up with the present Appeals.

After hearing the learned counsel for the appellants and after going through the materials on record, we find that the Tribunal has discussed in detail the *prima facie* case of the appellants before us and on consideration of such material, rather liberally passed the order in favour of the assessee. In such circumstances, we do not find any reason to interfere with the discretion exercised by the Tribunal. It is now settled law that if the Tribunal having competent jurisdiction, on consideration of the materials on record exercises its discretion, the same should not be interfered with unless it is patently wrong or perverse. We have already pointed out that in this case, the Tribunal has liberally exercised the discretion in favour of the assessee inspite of its *prima facie* finding against the appellants.

This Appeals are, thus, devoid of any substance and are consequently summarily dismissed."

The Appellate Tribunal in its impugned order had held that there was diversion of duty free raw material to DTA clandestinely. The case of Revenue is not merely based on the capacity of production and statements of the appellants but fully supported by statements of job workers as well as receivers of the diverted goods. The appellants could not make a *prima facie* case in their favour. The audited accounts showed substantial resources at their command and can make some pre-deposit. The appellants were directed to make partial pre-deposit.

[Prime Ployweave Ltd. v. Commissioner - 2013 (298) E.L.T. A25 (Guj.)]