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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 16 of 2015

M/s Vimal Construction, through its Partner Shri Varun Jain, 5, South Avenue, Choubey Colony, Raipur, Chhattisgarh, 492001.

---- Appellant

Versus

Union of India, through the Commissioner of Central Excise & Service Tax, Central Excise Building, Dhamtari Road, Tikrapura, Raipur, Chhattisgarh – 492001.

---- Respondent

For the Appellant	:	Shri Adhiraj Surana, Advocate.
For the Respondent	:	Shri Maneesh Sharma, Advocate.

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.

Judgment On Board

Per NAVIN SINHA, C.J.

1/7/2015

1. The present appeal under Section 35(F) of the Central Excise Act, 1994, assails order dated 17.3.2015 granting waiver of pre-deposit with regard to interest and penalty only, subject to deposit of ₹75,00,000/- within a period of eight weeks passed by the Customs, Excise and Service Tax Appellate Tribunal in Appeal No. ST/52017/2014-CU(DB).

2. Learned Counsel for the Appellant sought to persuade us that the extent of waiver from pre-deposit granted was very onerous virtually amounting to rejecting the appeal itself. The Appellant seriously disputes the liability. The Tribunal has not considered the Circular dated 16.9.2014 that only 7.5% or maximum of 10% may be required to be deposited in the appeal. The aspect of undue hardship has not been considered. According to the Appellant, its service tax liability would come approximately ₹17,00,000/- only. It was lastly submitted that the amount of pre-deposit directed is virtually the entire liability that may finally accrue. The last submission was that if the Court is not inclined to entertain the appeal, the time for deposit may be extended further.

3. Learned Counsel for the Respondent has opposed the appeal submitting that no undue hardship had been pleaded before the Tribunal. The Circular dated 16.9.2014 is prospective in nature. The present demand notice is dated 15.10.2012. The service tax liability of the Appellant had been assessed at ₹99,86,566/- alongwith interest and penalty. The Tribunal suo moto has more than adequately exercised its discretionary jurisdiction and directed deposit of ₹75,00,000/- only staying the interest and penalty part. Learned Counsel for the Respondent has opposed any further extension of time for deposit.

4. We have considered the submissions on behalf of the parties. At this stage, we are not concerned with the merits of the appeal. The Tribunal has prima facie opined for service tax liability. The rest is a matter of argument and quantification.

5. The grant of waiver of pre-deposit in the appeal is more a matter for exercise of discretion by the Tribunal on basis of materials that may be urged before it. The law stands well settled that if a party claims undue hardship, the onus lies on it, and it is his obligation to plead undue hardship with necessary facts in support of the same. Reference may be made to (2006) 13 SCC 347 (Benara Valves Ltd. and Others vs. Commissioner of Central Excise and Another) and (2007) 13 SCC 487 (Indu Nissan Oxo Chemicals Industries Limited vs. Union of India and Others).

6. We have examined the stay application preferred by the Appellant before the Tribunal. There is no pleading whatsoever or even a whisper of a suggestion with regard to any undue hardship in-compliance of the order as assessed by the authorities. The notification dated 16.9.2014 is prospective in nature has already been assessed to service tax liability.

7. We are not inclined to interfere with the order dated 17.3.2015. The appeal is rejected. The time for deposit as directed by the order is further extended by six weeks from today failing which the Tribunal will be at liberty to proceed with the matter in accordance with law.

8. The appeal is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE

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