IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CENTRAL EXCISE APPEAL NO.15 OF 2013
(Avtar and Company vs. Customs, Excise and Service Tax Appellate Tribunal and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI AND P.N. DESHMUKH, JJ..

DATED : SEPTEMBER 3, 2015

We have heard Adv. Parchure for appellant and Adv. Mirza with Adv. Deshpande for respondent Department.

After order dated 3/9/2013 refusing to modify the direction issued earlier on second occasion, present appeal has been preferred by the appellant, who is a Sub-Contractor in the present matter.

For the present matter, it is not in dispute that the original contract was entered into by Western Coalfields Ltd. with one M/s. Navjivan

Earth Movers Pvt. Ltd. and in turn, part of the said work was let out by said M/s. Navjivan Earth Movers Pvt. Ltd. to the present appellant.

The respondent Department has demanded service tax for service rendered by appellant as Sub-Contractor.

Effort of Adv. Parchure is to demonstrate that on complete contract with Western Coalfields Ltd., M/s. Navjivan Earth Movers Pvt. Ltd. has discharged the liability to pay service tax and as service is only one, the appellant as Sub-Contractor cannot be called upon to pay service tax again. He has also pointed out to us that the work done by the appellant as a Sub-Contractor does not qualify as cargo handling service.

The learned Counsel for respondent Department has stated that the show-cause notice clearly pointed out status of appellant as Sub-Contractor and service tax demanded is towards service rendered by the appellant to principal Contractor, i.e. M/s. Navjivan Earth Movers Pvt. Ltd. Thus, entirely different service is charged and as such, payment of tax by M/s. Navjivan Earth

Movers Pvt. Ltd. in relation to service provided by it to Western Coalfields Ltd. is not relevant here. It is also pointed out that the appeal filed by appellant before Customs, Excise and Service Tax Appellate Tribunal has not been looked into on merits and because of interim order passed by this Court on 17/9/2013, it is still pending.

With the assistance of respective Counsel, we have perused the papers. We find that on 29/11/2012, CESTAT has considered application moved by appellant for stay and dismissed it for want of prosecution and directed the appellant to make pre-deposit of the dues adjudged in the impugned order. The dues adjudged in the impugned order are Rs.55.89 lakhs approximately. The appellant thereafter moved application and sought modification in it explaining that on account of death in the family, matter could not be attended to on 29/11/2012. The miscellaneous application was looked into and rejected on 3/6/2013. Thereafter again second application seeking modification was moved and it has been rejected on 3/9/2013. After this second rejection, this Court has been approached.

In this situation, we find that no substantial question of law arises for determination.

On two occasions, CESTAT had given time to appellant to comply with the order of pre-deposit. Even in the last order dated 3/9/2013, it gave time of two weeks. In this situation, considering the fact that the matter is pending since 2012 before CESTAT and this Court has granted interim order on 17/9/2013, we grant appellant time of four weeks to comply with the order of pre-deposit. If it is not complied with, CESTAT shall be free to proceed further and take decision on his appeal as per law. If it is complied with, CESTAT shall decide challenge on merits within next three months.

With these directions, we dispose of the present appeal. No costs.

JUDGE JUDGE

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