IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

C.E.Appeal.No. 8 of 2015 ()

AGAINST STAY ORDER NO.20474/2015 DATED 11.02.2015 OF THE CENTRAL EXCISE, CUSTOMS AND SERVICE TAX APP.TRIBUNAL, BANGALORE IN ST/20162/2014 RECEIVED ON 13.03.2015

APPELLANT(S):/APPELLANT IN T.A.

M/S.IMPRESSARIO EVENT MARKETING COMPANY (P) LTD.,
5TH FLOOR, CHAIRTHANYA BUILDING, S.A.ROAD,
KOCHI - 682 016.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

RESPONDENT(S):/RESPONDENT IN T.A.

THE COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS & SERVICE TAX,
C.R.BUILDING, I.S.PRESS ROAD,
KOCHI - 682 018.

BY ADV. SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCIS
BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EX

THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CEA8/15

APPENDIX

APPELLANT'S ANNEXURES

ANNEXURE-A: COPY OF SHOW CAUSE NOTICE NO.61/2006-07 DATED 23.10.2006 ISSUED TO THE APPELLANT BY THE ADDITIONAL DIRECTOR GENERAL, BANGALORE.

ANNEXURE-B : COPY OF REPLY DATED 27.01.2007 TO ANNEXURE A SHOW CAUSE NOTICE FILED BY THE APPELLANT BEFORE THE ADDITIONAL COMMISSIONER OF CENTRAL EXCISE, KOCHI - 18.

ANNEXURE-C : COPY OF ORDER IN ORIGINAL NO.21/2007/SERVICE TAX DATED 17.08.2007 ISSUED TO THE APPELLANT BY THE ADDITIONAL COMMISSIONER OF CENTRAL EXCISE.

ANNEXURE-D : COPY OF ORDER IN APPEAL NO.224/2013-ST DATED 07.10.2013 ISSUED TO THE APPELLANT BY THE COMMISSIONER OF CENTRAL EXCISE (APPEALS).

ANNEXURE-E : COPY OF PETITION FOR WAIVER OF PRE DEPOSIT DATED 14.01.2014 FILED BY THE APPELLANT BEFORE THE APPELLANT TRIBUNAL, BANGALORE.

ANNEXURE-F : COPY OF STAY ORDER NO.20474/2015 DATED 11.02.2015 ISSUED TO THE COUNSEL FOR THE APPELLANT BY THE APPELLATE TRIBUNAL.

ANNEXURE-G : COPY OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.03.2014 ALONG WITH RESPECTIVE SCHEDULES.

ANNEXURE-H : COPY OF E-RECEIPT DATED 26.03.2015 EVIDENCING PRE DEPOSIT OF RS.3,60,496/-.

//TRUE COPY//

PA TO JUDGE.

jg

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

....

Central Excise Appeal No.8 of 2015

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Dated this the 10th day of April, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. We have heard the learned counsel for the appellant and the learned counsel for the Revenue.

2. This appeal is against an order whereby the Customs, Excise & Service Tax Appellate Tribunal exempted the appellant from deposit, only to the extent of 50% of the demand disputed in appeal.

3. The learned counsel for the appellant argued that having regard to the change of law brought in substitution of Section 35F of the Central Excise Act, 1944 as per Finance (No.2) Act, 2014, it should be taken as a guiding principle that all amounts beyond 10% ought to have been waived even in pending appeals. However, we see the second proviso occurring after clauses (i), (ii)

and (iii) of Section 35F as substituted by the Finance Act, 2014. It enjoins that the provisions of that substituted Section shall not apply to stay applications and appeals pending before any appellate authority prior to the commencement of Finance Act, 2014.

4. Though we are of the view that the argument advanced on behalf of the appellant based on the doctrine of equality and equitable principles may deserve a deeper look in the context of balancing the rights of litigants without reference to the grounds of appeal and conditions of appeal, we think that such an exercise need not be carried out in the appeal in hand, having regard to the amount involved and the appellant's Profit & Loss Account for the year ending 31.03.2014 and also taking note of the different outstandings due to the appellant. Though those materials disclosed that the appellant faces financial hardship, that situation does not appear to have been pithily placed for consideration of the learned CESTAT. The issue of undue

hardship in the event of waiver not being granted, does not seem to have been appropriately projected before the CESTAT.

Be that as it may, having regard to the entire materials on record, we think that ends of justice would be satisfied if the impugned Annexure-F order is modified directing the appellant to deposit 30% of the tax demanded. Such pre-deposit shall be made after giving credit to any amount already remitted following the demand impugned in the appeal pending before the CESTAT. Time for such payment will stand enlarged till 30.04.2015. This appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)

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