IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

C.E.Appeal.No. 11 of 2015

AGAINST THE ORDER IN ST 26506/2013 of CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE DATED 23.3.2015

APPELLANT:

CENTRE FOR DEVELOPMENT OF IMAGING TECHNOLOGY (C-DIT)
THIRUVANANTHAPURAM.

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENTS:
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1. COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS
THIRUVANANTHAPURAM & OTHERS

2. CUSTOMS,
EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH
BANGALORE.

R1 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CB EX

THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.E.Appeal.No. 11 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A : TRUE COPY OF THE SHOW CAUSE NOTICE DATED 19.10.2011.

ANNEXURE B: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 16.4.2012.

ANNEXURE C: TRUE COPY OF THE ADJUDICATION ORDER NO.C NO.N/16/95/2011 ST DATED 28.2.2013 PASSED BY THE FIRST RESPONDENT.

ANNEXURE D: THE COPY OF THE STATEMENT TAKEN FROM THE REGISTRAR.

ANNEXURE E: THE COPY OF THE LETTER DATED 28.12.2007.

ANNEXURE F: THE COPY OF THE CIRCULAR NO.5/92 DATED 13.10.92.

ANNEXURE G: THE COPY OF THE STAY ORDER OF THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, BANGALORE DATED 19.8.2013.

ANNEXURE H: THE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 5-11-2013 IN C.E.APPEAL NO.8/2013.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

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C.E.A.No.11 of 2015

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Dated this the 1st day of June, 2015

JUDGMENT

Antony Dominic, J.

Heard the counsel for the appellant and the learned Standing Counsel appearing for the respondent.

2. In this appeal, stay order dated 23.3.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Bangalore in S.T.26506/13 is challenged. The appellant society was issued a demand for service tax of about 1,72,48,949/- with interest and penalty. That demand was for the period 2006-07 to 2010-2011. In the appeal that was filed before the Tribunal, an application for waiver of pre-deposit and stay was filed. On that application, Tribunal passed order dated 19.8.2013 requiring the appellant to deposit an amount of Rs.1 crore. However, the amount was not deposited and on the ground of non compliance, the Tribunal dismissed the appeal on 27.3.2014.

3. In the meanwhile, the order dated 19.8.2013 was challenged by the appellant in C.E.Appeal No.8/13 before this Court. By judgment dated 5.11.2013, that appeal was disposed of setting aside this order. In deference to the judgment of this Court, the Tribunal restored the appeal to file, heard the application afresh and passed the impugned order in which the Tribunal has again directed the appellant to deposit Rs.1 crore and report the compliance on 4.6.2015. It is in this background impugning the order dated 23.3.2015, this appeal is filed.

4. From the judgment of this Court in C.E.8/13, what we find is that the order dated 19.8.2013 was interfered with, primarily for the reason that there was no finding on the issue of limitation raised by the appellant and it was without dealing with that contention that the appellant was ordered to deposit Rs.1 crore. In the judgment, this Court referred Section 73 of the Finance Act and set aside the order dated 19.8.2013 directed the Tribunal to

consider the said contention and then proceed to pass a fresh order. However, order dated 23.3.2015 show that despite a positive direction by this Court the issue of limitation was not considered. This, therefore, means that the order dated 23.3.2015 passed by the Tribunal is not one in compliance with the binding directions of this Court. For that reason, this order cannot be sustained.

5. However, the order of the Tribunal itself show that the official of the appellant himself had admitted that 35 lakhs of the service tax demanded was for the normal period. This, therefore, mean that the issue of limitation, though not considered by the Tribunal, cannot have any relevance in so far as this 35 crores is concerned.

6. The appeal is of 2013 and this is second round of litigation before this Court and if we direct reconsideration, that will only delay the final disposal of the appeal again.

7. In such circumstances, instead of remitting the matter afresh to the Tribunal, we direct the appellant to deposit Rs.35 lakhs within four weeks from today and report compliance before the Tribunal on 8.7.2015. Subject to deposit as above, pre deposit of the balance due under the order impugned before the Tribunal will stand dispensed with. The order of the Tribunal will stand set aside.

Appeal is disposed of accordingly.

ANTONY DOMINIC
JUDGE

SHAJI P. CHALY
JUDGE

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