IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

C.E.Appeal.No. 12 of 2015 ()

AGAINST THE ORDER IN ST/STAY/25288/2013 IN ST 25270/2013 of CUSTOMS,EXCISE&SERVICE TAX APP.TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE DATED 28.1.2015

APPELLANT(S)/APPELLANT:

M/S.ORIENTAL EXTRACTIONS
DHAWANTARI BHAVAN, MUNICIPAL OFFICE WARD,
ALAPPUZHA , KERALA

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.ROSIE ATHULYA JOSEPH
SMT.O.A.NURIYA

RESPONDENT(S)/RESPONDENT:

THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND
SERVICE TAX, COCHIN, CCE, C.R, BUILDING
I.S PRESS ROAD, ERNAKULAM, COCHIN 682 018

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

THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN C.E.A.12/15

APPELLANT'S EXHIBITS:

ANNEXURE A: TRUE COPY OF ORDER DATED 11.12.2012 OF THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, COCHIN COMMISSIONERATE, COCHIN.

ANNEXURE B: TRUE COPY OF the APPEAL BEFORE THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL.

ANNEXURE C: TRUE COPY OF THE PETITION FOR WAIVER BEFORE THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL.

ANNEXURE D: TRUE COPY OF ORDER DATED 28.1.2015 OF THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL.

/TRUE COPY/

PS TO JUDGE

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

C.E.A.No.12 of 2015

Dated this the 14th day of July, 2015

JUDGMENT

Antony Dominic, J.

1. This appeal is directed against Annexure D order passed by the Customs, Excise & Service Tax Appellate Tribunal, directing the appellant to deposit an amount of ₹25 lakhs and report compliance. This order was passed on an application filed by the appellant praying for waiver of pre-deposit, filed along with Annexure B appeal, which, in turn, was against Annexure A order passed by the first respondent.

2. Reading of Annexure D order shows that the Tribunal has examined the question whether the appellant has made out a prima facie case justifying the prayer for waiver of pre-deposit of the service tax demanded in Annexure A. On this issue, the Tribunal examined whether the transfer of intellectual property rights is a sale or transfer of right to use. It is seen that the appellant failed to satisfy the Tribunal that it was a sale in perpetuity. The order also

shows that the appellant did not satisfy the Tribunal, in any manner, that the company suffered from financial difficulty. It was taking note of this aspect that the Tribunal directed deposit of ₹25 lakhs. This order, in our view, does not suffer from any illegality.

Appeal fails. It is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

kkb.