IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

C.E.Appeal.No. 7 of 2014 ()

AGAINST THE MISC. ORDER NO.28105-28106/2013 DATED 10.12.2013 OF CUSTOMS,EXCISE&SERVICE TAX APP.TRIBUNAL,BANGALORE - FOR THE PERIODS - 2008-09 TO 2010-11

APPELLANT(S):/APPELLANT

M/S.KINSHIP SERVICES (INDIA) PVT.LTD.
WILLINGDON ISLAND, MARAR ROAD, KOCHI-682003
REPRESENTED BY ITS MANAGING DIRECTOR
SHRI.M. PRABHAKAR KINI.

BY ADVS.SRI.T.M.SREEDHARAN (SR.)
SRI.M.B.PRAJITH
SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENT(S):/RESPONDENT

THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS
COCHIN COMMISSIONERATE, CENTRAL REVENUE BUILDING
I.S. PRESS ROAD, COCHIN-682 018.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,
SENIOR STANDING COUNSEL FOR CBEC

THIS CENTRAL EXICISE APPEAL HAVING BEEN FINALLY HEARD ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE-A : COPY OF ORDER IN ORIGINAL NO.19-20/2013 ST DATED 01.03.2013 PASSED BY THE RESPONDENT.

ANNEXURE-B : COPY OF APEALS DATED 07.06.2013 FILED BY THE APPELLANT BEFORE THE CESTAT, BANGALORE.

ANNEXURED-C : COPY OF STAY AND DISPENSATION PETITION DATED 07.06.2013 FILED BY THE PETITIONER BEFORE THE CESTAT, BANGALORE.

ANNEXURE-D : COPY OF ORDER DATED 10.12.2013 IN MISC. ORDER NO.28105-28106/2013 PASSED BY THE CESTAT, BANGALORE.

ANNEXURE-E : COPY OF JUDGMENT IN WP(C) NO.6485/2014 DATED 11.04.2014 PASSED BY THIS HONOURABLE COURT.

ANNEXURE-F : COPY OF FINAL ORDER NO.20305-20306/2014 DATED 10.03.2014 PASSED BY THE CESTAT, BANGALORE.

//TRUE COPY//

PA TO JUDGE.

jg-14/12

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

....

C.E.Appeal No.7 of 2014

....

Dated this the 17th day of November, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard the learned Senior counsel for the appellant and the learned Senior counsel for the Central Board of Excise and Customs.

2. In this appeal under Section 35G of the Central Excise Act, 1944 what is called in question is an order of the Customs, Excise & Service Tax Appellate Tribunal imposing certain conditions while considering applications for waiver of pre-deposit pending appeal. Cautioning ourselves as to the parameters within which an appeal under Section 35G could be entertained on a substantial question of law, on perusing the impugned order, we see that many of the contentions, which were sought to be raised, were actually given up, at least for the purpose of interlocutory applications are concerned. We noted that the order was issued

even without the Revenue being heard. Yet, the Tribunal had noted that the appellant, at least for the purpose of the applications for waiver and stay, had not disputed the liability in relation to matters as are noted in paragraph Nos.6, 7 and 8 of the impugned order. It also noted that apart from relying upon a circular, there was no material to conclude finally as to what is the claim based on the dispatch money and particularly as to whether it is in the form of incentive to steamer agent. The Tribunal was of the view that the said issue is a debatable one and could be considered only on final hearing.

3. Having bestowed our anxious consideration to the quantification of the amount fixed for deposit pending appeal, we are of the view that taking the amount covered under the dispatch money issue and the availment of CENVAT credit and also making an approximation of the whole amounts covered by those issues and add-ons in the form of interest etc., it would be just and reasonable to trim down the amount fixed as per the impugned order to be at ₹1,00,00,000/-.

In the result, this appeal is allowed without expressing anything on the merits of the contentions in the appeal and also recording the submission of the learned Senior counsel on behalf of the appellant that there was no concession which could be militated against the appellant during the course of the appeal and that at any rate there could not have been any concession on any question of law. It is directed that if the appellant deposits an amount of ₹1,00,00,000/- (Rupees one crore only), instead of ₹1,25,00,000/-, within a period of five weeks from today and reports compliance to the CESTAT on 11.01.2016, directions given by the Tribunal for waiver of pre-deposit of the balance dues and stay of recovery continue to be in tact.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)

jg-17/11