IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

Cus.Appeal.No. 4 of 2015 ()

AGAINST THE STAY ORDER/MISC ORDER NO. 20960/2015 of CUSTOMS,EXCISE&SERVICE TAX APPELLATETRIBUNAL, SOUTH ZONAL BENCH, BANGALORE DATED 02-06-2015

APPELLANT:

M/S ACCEL TRANSMATIC LTD.
(FORMERLY TRANSMATIC SYSTEMS LTD.)
REGD. OFFICE.17/27, JAGATHY,
THIRUVANANTHAPURAM - 695 014.
REPRESENTED BY ITS AUTHORISED SIGNATORY,
SRI.T. RAVINDRAN

BY ADVS.SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENTS:
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1. THE JOINT COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX, T.C. NO.26/334,
ICE BHAVAN, PRESS CLUB ROAD,
THIRUVANANTHAPURAM - 695 001.

2. THE COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS & SERVICE TAX (APPEALS),
C.R. BUILDING, I.S. PRESS ROAD,
COCHIN - 682 018.

3. THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, IST FLOOR,
W.T.C. BUILDING, FKCCI COMPLEX,
K.G. ROAD, BANGALORE - 560 009.

4. THE SUPERINTENDENT OF CENTRAL EXCISE,
CUSTOMS RANGE - 1,
THIRUVANANTHAPURAM - 695 001.

R1,R2 & R4 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB OF EXCISE

THIS CUSTOMS APPEAL HAVING COME UP FOR ADMISSION ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Cus.Appeal.No. 4 of 2015

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE A : TRUE COPY OF ORDER IN ORIGINAL NO.61/2010 CUS(JC) DATED 18.10.2010 ISSUED BY THE 1ST RESPONDENT.

ANNEXURE B : TRUE COPY OF THE ORDER NO.TVM/EXCUS-000-APPP-071/13-14 DATED 16.01.2014 PASSED BY THE 2ND RESPONDENT.

ANNEXURE C : TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 20.05.2014 FILED BEFORE THE 3RD RESPONDENT.

ANNEXURE D : TRUE COPY OF THE PETITION FOR STAY DATED 20.05.2014 FILED BEFORE THE 3RD RESPONDENT.

ANNEXURE E : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.22687 OF 2014 DATED 28.08.2014 PASSED BY THIS HON'BLE COURT.

ANNEXURE F : TRUE COPY OF ORDER MISC. NO.22808 & 22809/2014, C/COD/21913/2014; C/STAY/21914/2014 IN C/21728/2014-DB DATED 21.10.2014 PASSED BY THE 3RD RESPONDENT.

ANNEXURE G : TRUE COPY OF JUDGMENT DATED 28.1.2015 IN C.E. APPEAL NO.3 OF 2015 OF THIS HON'BLE COURT.

ANNEXURE H : TRUE COPY OF STAY ORDER/MISC. ORDER NO.20960/2015 DATED 2.6.2015 PASSED BY THE 3RD RESPONDENT.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

Customs Appeal No.4 of 2015

Dated this the 10th day of July, 2015

JUDGMENT

Antony Dominic,J.

This appeal is filed against Annexure-H order passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore on an application of the appellant for waiver of pre-deposit of the customs duty demanded, against which the statutory appeal is filed before the Tribunal. By the impugned order, the Tribunal held that the appellant has failed to establish any merit in the appeal and also the case of financial hardship that was pleaded. On that basis the appellant was directed to deposit the duty demanded within six weeks. It is this order which is under challenge before us.

2. We heard the learned counsel for the appellant and also the learned counsel appearing for the respondents.

3. The appellant is a 100% export oriented unit. On the basis that they did not achieve the export obligation, proceedings were initiated and an order was passed by the Director - STPI.

Though a writ petition filed against the order of the Director is pending before this Court, the appellant has not succeeded in obtaining any interim order in that case. Based on the order passed by the Director - STPI, customs authorities initiated proceedings and finally confirmed demand of Rs.33,73,237/- towards customs duty and central excise duty of Rs.9,741/- was also demanded. It was aggrieved by this order, the appeal was filed before the Tribunal.

4. In the application filed by the appellant for waiver of pre-deposit, on an earlier occasion, the Tribunal had passed an order requiring the appellant to deposit the duty demanded and report compliance on 29.01.2015. The amount was not deposited and as there was no representation on behalf of the appellant on 29.01.2015, the case was dismissed. However, the order passed by the Tribunal requiring deposit of the duty demanded was set aside by this Court and taking note of the direction in the judgment to re-consider the order passed on the application for waiver of pre-deposit, the Tribunal restored the appeal to file and heard the application afresh. It is accordingly that Annexure-H order was passed which is impugned in this appeal.

5. It is the settled position of law that as far as an application for waiver of pre-deposit is concerned, the relevant considerations which should weigh with the Tribunal are whether the appellant has made out a prima facie case and whether any financial hardship has been established. In so far as the question of prima facie case is concerned, reading of paragraph 7 of the order shows that the Tribunal has taken note of the fact that the Director - STPI has passed on order against the appellant and that though a writ petition has been filed against the said order, no interlocutory orders was passed by this Court. On this basis, the Tribunal has rightly held that the order passed by the Director - STPI binds the authorities under the Customs Act and that in view of the said order of the Director, the appellant could not make out a prima facie case in their favour.

In so far as the issue of financial hardship is concerned, in paragraph 5 of the order the Tribunal has held thus;

> "As regards financial position, to a specific query from the Bench, learned counsel fairly agreed that he has no documentary evidence to show that

> appellant is having financial difficulties. He submits that the Unit has huge accumulated losses but once again no documentary evidence could be produced.”

6. This, therefore, means that appellant has failed to establish not only a prima facie case but also financial hardship before the Tribunal. It was in such circumstances that the Tribunal has ordered deposit of the duty demanded. However, the counsel for the appellant wanted us to accept certain documents in order to indicate that the appellant company is in financial difficulties. According to us, the appellant having failed to produce such records before the Tribunal on both the occasions when the application was heard and in the absence of any explanation for such failure, this Court will not be justified in entertaining the request made before us. We therefore, do not find any merit in this appeal.

Appeal fails and accordingly it is dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

smv