IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Civil Miscellaneous Appeal Nos.1521 and 1962 of 2015
and
M.P.Nos.1 and 1 of 2015

Anandram Developers Pvt.Ltd.
New No.45 & 47 (Old No.17 & 18)
Arcot Road, Saligramam
Chennai 600 093. ... Appellant in both CMAs

-Vs-

1. Customs, Excise and Service Tax
   Appellate Tribunal, South Zonal Bench
   Shastri Bhavan, Haddows Road
   Chennai 600 006.

2. Commissioner of Service Tax, Chennai
   Newry Tower, 12th Main Road
   Anna Nagar, Chennai 600 040. ... Respondents in both CMAs

Civil Miscellaneous Appeals filed under Section 35G of the Central Excise Act, 1944 as against the orders passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai in Final Order No.40780/2014 dated 10.11.2014 and Miscellaneous Order No.41484-41485 of 2014 dated 27.08.2014 against the Order of the Commissioner of Central Excise, Chennai - 1, Commissionerate, Chennai-34 dated 05.09.2012 and made in C.No.IV/09/769/2009 STC.Adj

For Appellant in both CMAs. : Mr.Joseph Prabakar

For Respondents in both CMAs. : Mr.V.Sundareswaran
Senior Panel Counsel for the Central Excise Department for R2
R1-Tribunal

COMMON JUDGMENT

(The Judgment of the Court was made by V.RAMASUBRAMANIAN,J.)

While one appeal arises out of an order directing the appellant to make a pre-deposit of Rs.40,00,000/- for entertaining the appeal, before the Customs, Excise and Service Tax Appellate Tribunal [CESTAT], the second appeal arises out of the consequential order passed by the CESTAT dismissing the appeal for non-compliance of the conditional order.

2. Heard Mr.Joseph Prabakar, learned counsel for the appellant. Mr.V.Sundareswaran, learned Senior Panel Counsel for the Central Excise Department takes notice for the second respondent.

3. By an order in original dated 05.09.2012, the Commissioner of Central Excise imposed upon the appellant, a levy of service tax to the tune of Rs.1,10,51,325/- together with another levy of service tax to the extent of Rs.3,29,754/- and a penalty of Rs.1,13,80,989/-. The appellant filed an appeal before the CESTAT and sought stay as well as waiver. By a miscellaneous order passed on 23.07.2014, the Tribunal directed the appellant to make a pre-deposit of Rs.1,13,81,079/- within four weeks.

4. However, the appellant filed an application for recalling the said order on the ground that the said order was passed in his absence. Accepting the plea of the appellant, the first order dated 23.07.2014 was recalled on 27.08.2014 and the pre-deposit condition was modified to one of a direction to pay Rs.40,00,000/-. The appellant was directed to make this deposit within a period of eight weeks.

5. Since the appellant did not comply with the conditional order, the Tribunal passed the consequential order of dismissal of the main appeal. Therefore, as against the conditional order dated 27.08.2014 and the consequential order of dismissal of the appeal by the CESTAT, the assessee has come up with two appeals.

6. A perusal of the order dated 27.08.2014 directing the appellant to make a pre-deposit of Rs.40,00,000/- would show that the Tribunal followed the interim order passed by the Supreme Court in P.K.Hospitality Services P.Ltd. vs. Union of India 2012 (26) STR J 142 (SC) and found prima facie that the contention that what was done by them was only a renting of an immovable property; that the agreement itself was wrongly termed as franchise agreement could not be accepted. Under such circumstances, we do not find anything wrong with the direction issued by the Tribunal to make a pre-deposit of

Rs.40,00,000/-.

7. It is true that the said finding is only prima facie and it is always open to the appellant to convince the Tribunal at the time of final hearing about the nature of the services rendered.

8. Once it is found that the parameters for deciding the application for a pre-deposit condition have been properly applied, no question of law arises for consideration before this Court in an appeal under Section 35 of the Central Excise Act, 1944. Hence, the appeal arisen out of the conditional order dated 27.08.2014 is liable to be dismissed. Once it is liable to be dismissed, the consequential order passed by the Tribunal cannot also be found fault with.

9. However, one indulgence can be shown to the appellant, viz., that of granting time for making a pre-deposit. This will enable the appellant to fight out the appeal on merits before the Tribunal. Therefore, even while affirming the conditional order of the Tribunal dated 27.08.2014, the appellant is granted time upto 31.10.2015 to make this deposit. If the appellant makes the deposit as ordered by the Tribunal before 31.10.2015, the Tribunal shall take up the main appeal for disposal and dispose of it on or before 31.12.2015. If the appellant makes the deposit as aforesaid, the consequential order will automatically gets set aside as otherwise, it will stand revived.

10. With the above direction, both the Civil Miscellaneous Appeals are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vj2

To

1. The Assistant Registrar,

Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench
Shastri Bhavan, Haddows Road
Chennai 600 006.

2. Commissioner of Service Tax, Chennai
Newry Tower, 12th Main Road
Anna Nagar, Chennai 600 040.

3. The Commissioner,
O/o The Commissioner of Central Excise,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34.

4. The Assistant Registrar,
Customs, Excise and Service Tax
Appellate Tribunal,
No.26, Shastri Bhavan, Haddows Road
Chennai 600 006.

+1cc to M/s.V.Sundareswaran, Advocate, S.R.No.51354
+1 cc to M/s.Joseph Prabakar, Advocate, sr.52100 (25/09/2015)

C.M.A.Nos.1521 and 1962 of 2015

MP(CO)
CA(23.09.2015)