IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.1895 of 2015

M/s VIP Enterprises
A2/6, Munuswamy Street
Ganapathypuram
Chrompet
Chennai 600 044 .. Appellant/Appellant

-vs-

1. The Commissioner of Service Tax
Newry Towers
2054-I Second Avenue
Anna Nagar
Chennai 600 040

2. The Customs, Excise and Service Tax
Appellate Tribunal
South Zonal Bench
First Floor
No.27, Haddows Road
Chennai 600 006 .. Respondents/Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 35-G of the Central Excise Act, 1944 against the Final Order No.40565/2014 dated 1.9.2014 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant :: Mr.V.S.Manoj

For Respondents :: Mr.V.Sundareswaran
Senior Panel Counsel for R1

JUDGMENT

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

This appeal is filed by the assessee under Section 35-G of the Central Excise Act, 1944 challenging an order of the CESTAT dismissing their appeal for non compliance of the conditional order.

2. Heard Mr.V.S.Manoj, learned counsel for the appellant and Mr.V.Sundareswaran, learned Senior Panel Counsel for the first respondent.

3. As against an order-in-original dated 6.11.2012, demanding service tax, education cess and secondary higher education cess, slapped on the appellant by the Commissioner, the appellant filed an appeal before the Tribunal along with an application for stay and waiver. By an order dated 28.10.2013, the Tribunal granted waiver and stay subject to the condition that the appellant deposited a sum of Rs.16,00,000/- within eight weeks. The Tribunal directed the appeal to be listed on 7.1.2014 for reporting compliance.

4. On 7.1.2014, the Tribunal considered the request of the appellant for extension of time to comply with the order. The request was conceded and a further time of eight weeks was granted. The appeal was directed to be listed on 19.3.2014 for reporting compliance.

5. On 19.3.2014, the appellant wanted further time. A further time of six weeks was granted. But even within the period of time so extended for a second time, the appellant could not comply with the conditional order, resulting in the main appeal getting thrown out by the order under appeal before us.

6. Since the appellant has failed to comply with the original conditional order, even after the grant of extension of time twice, the appellant has no right to challenge the consequential order of dismissal of the appeal. Therefore, this appeal is liable to be dismissed.

7. However, the learned counsel for the appellant submitted that the appellant is now hopeful of making the payment. Since the appellant has paid a sum of Rs.5,50,000/- out of the amount of Rs.16,00,000/- as directed by the Tribunal, we are of the view that one last opportunity could be given to the appellant.

8. Therefore, the appeal is allowed subject to the condition that the appellant pays the balance amount of Rs.10,50,000/- on or before 15.10.2015. If the appellant deposits this money with the respondent on or before 15.10.2015, the appeal shall stand revived and it shall be dealt with on merits by the Tribunal. The benefit of

this order will be forfeited if the appellant is not able to deposit the amount within the time fixed as above. Consequently, M.P.No.1 of 2015 is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ss
To
1. The Commissioner of Service Tax
    Newry Towers
    2054-I Second Avenue
    Anna Nagar
    Chennai 600 040

2. The Customs, Excise and Service Tax
    Appellate Tribunal
    South Zonal Bench
    First Floor
    No.27, Haddows Road
    Chennai 600 006

+1 cc to Mr.K.Vaitheeswaran, Advocate sr.48450
+1 cc to Mr.V.Sundareswaran, Advocate sr.48456

C.M.A.No.1895 of 2015

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