IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 5.11.2015

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
AND
THE HON'BLE MR.JUSTICE S.VIMALA

C.M.A.No.2536 of 2015
and
M.P.No.1 of 2015

M/s.Shri Krisshna Builders & Property Developers Ltd.,
rep. by its Managing Director P.Nandakumar
491 (New No.15), Poonamallee High Road,
Maduravoyal, Chennai 600 095. ...Appellant

vs.

Commissioner of Service Tax,
Chennai. ...Respondent

Civil Miscellaneous Appeal against the order dated 12.10.2015 in ST/S/169/12 in ST/233/2012 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant : Mrs.Hema Muralikrishnan

For Respondent : Mr.S.Sundareswaran,
Senior Panel Counsel

JUDGMENT

(Judgment of the Court was delivered by M.JAICHANDREN, J.)

The appeal has been filed against the impugned order, dated 12.10.2015, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, in ST/S/00169/2012, in ST/00233/2012.

2. Heard Mrs.Hema Muralikrishnan, learned counsel appearing for the appellant, as well as Mr.V.Sundareswaran, learned Senior

Panel Counsel, who accepts notice on behalf of the respondent.

3. The contention of the learned counsel appearing on behalf of the appellant is that the Tribunal has passed the impugned order directing the appellant to deposit a sum of Rs.20,00,000/-, within a period of four weeks from the date of the said order and to report compliance by 18th November, 2015. It is also stated that subject to such compliance, there shall be a waiver of pre-deposit of the balance demand during the pendency of the appeal. The main contention of the learned counsel appearing for the appellant is that the Tribunal had not applied its mind with regard to the plea of the appellant that the appellant was suffering undue financial hardship and that the appellant would not be in a position to make the pre-deposit of Rs.20,00,000/-, as directed by the Tribunal, by its impugned order, dated 12.10.2015.

4. Per contra, the learned Senior Panel Counsel appearing on behalf of the respondent had submitted that there was neither a plea that the appellant was suffering undue financial hardship, nor any document was filed before the Tribunal to substantiate such a plea. It is only now, before this court, in the present appeal, the appellant has taken such a plea, he had further submitted.

5. However, the learned counsel appearing on behalf of the appellant had further submitted that this court may be pleased to set aside the impugned order of the Tribunal, dated 12.10.2015, and to remit the matter back to the Tribunal for re-consideration of the plea of the appellant, with regard to undue financial hardship.

6. In the facts and circumstances of the case, this court finds it appropriate to set aside impugned order, dated 12.10.2015, passed by the Tribunal and to remit the matter back to the Tribunal, to decide the issue relating to the plea of the appellant that it was suffering undue financial hardship. Accordingly, the impugned order of the Tribunal is set aside and the matter is remitted back to the Tribunal for consideration of the said issue and to pass appropriate orders thereof. It is for the appellant to furnish sufficient evidence before the Tribunal to substantiate its claim that it was suffering undue financial hardship, as claimed in the present appeal, on or before the date fixed by the Tribunal for compliance of its order, by the appellant, viz., 18.11.2015. Thereafter, the Tribunal shall hear the matter with regard to the issue relating

to the pre-deposit, on 18.11.2015 and pass order in the stay petition viz., ST/S/00169/12, in ST/00233/2012, within a period of two weeks thereafter. In the event of failure by the appellant to furnish any evidence, as permitted by this court, it is open the Tribunal to proceed further with the available evidence.

7. The civil miscellaneous appeal is disposed of, with the above directions. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. Customs, Excise and
   Service Tax Appellate Tribunal,
   Chennai.

2. Commissioner of Service Tax,
   Chennai.

1 CC to Mr.L.Muralikrishnan, Advocate SR.No. 61086

C.M.A.No.2536 of 2015

PA (CO)
PSI (06.11.2015)