THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A No. 41 of 2014

09.07.2015

Between

Commissioner of Customs, Central Excise and Service Tax, Hyderabad

… Appellant

$ M/s TPSC (India) Pvt. Ltd., Hyderabad

...Respondent

! COUNSEL FOR APPELLANT: Dr. K. Manmadha Rao

^ COUNSEL FOR RESPONDENT: --

< Gist:

> Head Note:

? CITATIONS:

2013(29) S.T.R. 387 (Tri.-Del.)

2012-TIOL-138-CESTAT-DEL.

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ORDER:- (per Hon'ble Sri Justice G. Chandraiah)

This appeal, at the instance of Revenue, is directed against Misc. Order No.27037/2013 dated 28.08.2013 passed by CESTAT, South Zonal Bench, Bangalore, in Appeal No.ST/26848/2013-DB, whereunder and whereby the Tribunal granted stay of recovery till disposal of the appeal, and also waived pre-deposit.

2. Brief facts of the case are that the respondent/assessee-M/s TPSC (India) Pvt. Ltd., Hyderabad, entered into agreement with M/s TPSC, Japan according to which some employees from TPSC, Japan were deputed to work in India. On the ground that this amounts to receipt of manpower supply from TPSC, Japan, the Department initiated proceedings against the assessee to pay Service Tax on the amount paid by the assessee to TPSC, Japan. The demand amounted to more than Rs.1.17 crores with interest and penalty. Aggrieved by the same, the assessee filed an appeal before CESTAT, South Zonal Bench, Bangalore, along with a stay petition. The Tribunal, vide the impugned order, waived the pre-deposit and granted stay of recovery till disposal of the

appeal. Challenging the same, the Department filed the present appeal.

3. Heard learned counsel for the respondent-assessee and the learned Standing Counsel for the Department.

4. A perusal of the impugned order would show that the Tribunal, after considering the submissions of both the parties, observed that the employees deputed by TPSC are actually appointed by the assessee in India and a portion of their salary which is required to be delivered in their home country is paid to the employee by the Japanese counterpart and this is reimbursed on actual basis. The Tribunal also held that the reliance placed by the assessee in the decisions rendered by the Tribunal at Delhi in the case of **ITC Ltd.**[1] and also in **M/s Bain & Company India Pvt. Ltd.**[2], is appropriate.

5. Having considered rival contentions, the contention of the learned Standing Counsel for the Department that the Tribunal ought not to have granted absolute waiver and also stay of recovery without imposing any condition, does not merit any consideration in the facts of the case. The Tribunal had taken into consideration of the fact that the issue with regard to similar circumstances was already the subject matter of two decisions of the Tribunal at Delhi, stated supra. In that view of the matter, when the issue is squarely covered, there would be no justification for directing a pre-deposit. Hence, we see no illegality or infirmity in the impugned order.

6. The appeal is, accordingly, dismissed. As the matter

pertains to the period 2008-09 to 2011-12, the Tribunal is directed to dispose of the appeal as expeditiously as possible, preferably within six months from the date of receipt of a copy of this order. No costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

09th July, 2015

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[1] 2013(29) S.T.R. 387 (Tri.-Del.)

[2] 2012-TIOL-138-CESTAT-DEL.