THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A No. 108 of 2015

ORDER:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This appeal is filed against the Stay Order dated 04.06.2015 passed by CESTAT, South Zonal Bench, Bangalore, in Appeal No.E/25508/2013-DB whereby the Tribunal directed pre-deposit of 50% of the duty demanded within eight weeks and directed to report compliance by 12.08.2015.

2. The appellant is a proprietary concern and the appellant pleaded before the Tribunal their financial hardship. The principal contention of the appellant is that the entire of production was undertaken by the appellant in rural area at Choutkoor village in Nalgonda district and as such there is no duty liable on them. As a matter of fact, the appellant is an assembling unit as the part components are purchased by the appellant for which VAT was paid during the relevant point of time and by branding the same under the authorisation from the brand owner, the same was supplied to the brand owner to be sold in retail. On account of financial difficulties, the appellant went out of business since 2009 and to evidence the same, the appellant initially filed bank statement of his personal account wherein virtually meagre transactions evidencing few thousands of rupees up to July 2015 are

noticed. Later, the appellant, by seeking leave of the Court, filed various documents and bank statements in relation to the proprietary concern to support their claim of financial hardship. *Prima facie* perusal of the documents reveal that though there were transactions during 2007-08 and 2008-09, the specific assertion of the appellant is that the appellant went out of business and no manufacturing as such has been done since 2009. The deponent M.V. Rama Murthy, proprietor of the appellant, has filed material to show that he has virtually become a pauper and living by getting support from national food security cards. With the above pleading that if only an opportunity is given, the appellant would be able to support their claim that there is no tax liability as such, the appellant is before us with this appeal.

3. Learned counsel for the appellant pleads that a lenient view may be taken and the Tribunal may be directed to take into consideration all the material and give an opportunity with respect to waiver of pre-deposit.

4. The application is opposed by Mr. Gopala Krishna Gokhale, learned Standing Counsel for the department, who submits that at the very first instance the appellant should have placed the material on record and, at any rate, the appellant having not availed the remedy available cannot seek indulgence of this Court. He would also submit that this would pave way for other similarly situated people to approach the Court and seek similar relief.

5. We have considered the rival submissions and perused the record.

6. A *prima facie* perusal of the record reveals that the appellant has stopped the business since 2009 and if the fervent pleading of the learned counsel for the appellant is to be accepted, the appellant is living on support from the State. The crucial aspect that is required to be considered by the Tribunal in relation to the pre-deposit, apart from a prima facie case, is the financial hardship which can be gathered only from the financial statements like balance sheets, income tax returns, bank statements etc. In the present case, admittedly, the appellant did not place on record before the Tribunal the relevant material. The Tribunal also found that in response to the show cause notice, the appellant did not submit necessary facts before the Commissioner. This aspect of the matter weighed with the Tribunal, but however, the Tribunal had found that there is some merit in the appellant's case and found that the case requires consideration on facts. In that view of the matter, the Tribunal found a *prima facie* case in favour of the appellant. As there is no material placed before the Tribunal with respect to the financial hardship, but taking into consideration the oral pleading made on behalf of the appellant, the Tribunal directed 50% to be deposited. In that view of the matter, the order of the Tribunal cannot be found fault with. However, considering the fact that a voluminous material has been placed before us which, for some reason or the other, the appellant could not place before the Tribunal, we

deem it appropriate to remit the matter on the aspect of pre-deposit for fresh consideration by the Tribunal, on the condition of the appellant depositing 10% of the disputed tax within eight weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall either consider the application for waiver of the pre-deposit or take up the appeal itself and pass appropriate orders. We also make it clear that the observations made in the present appeal are considering the peculiar facts of the case and the peculiar material placed before us and the same is not intended to be treated as a precedent.

7. With the above observations, the appeal is disposed of. No costs. Pending miscellaneous petitions, if any, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

08th September, 2015

Note: Issue C.C. in two days
B/o
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