

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CEA NO.43 OF 2015

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ORDER: (Per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 35G of the Central Excise Act, is preferred against the order of the CESTAT dated 18.02.2015 directing waiver of the balance pre-deposit on condition that the petitioner deposits 50% of the duty demanded within a period of eight weeks from the date of the order.

Section 35F of the Central Excise Act requires the appellant to deposit with the adjudicating authority, pending disposal of the appeal, the duty demanded. Under the proviso thereto, the Appellate Tribunal has been conferred discretion, subject to the interests of the revenue being safeguarded, to waive pre-deposit, either in whole or in part, if such deposit would cause undue hardship to the appellant.

Sri B. Srinivas, Learned Counsel for the petitioner, would submit that the petitioner has huge accumulated losses; their factory is not functioning for the past two years; they have also not paid salaries of their employees; and the order of the Tribunal, directing them to deposit 50%, would cause them undue hardship. While the Tribunal has the power to waive pre-deposit, even in its entirety if such pre-deposit would cause the appellant undue hardship, it is also required to safeguard the interests of the revenue.

Exercise of discretion by the Tribunal in the present case, in directing the petitioner to deposit 50% of the duty, does not suffer from any patent illegality, giving rise to a substantial question of law, necessitating interference in appeal under

Section 35G of the Central Excise Act. As the period for compliance of the order of the CESTAT has already expired, we consider it appropriate to extend the time for pre-deposit, as directed by the Tribunal, by a further period of six weeks from today. We request the CESTAT to decide the main appeal itself with utmost expedition.

Subject to the above observations, the appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 26.11.2015.

MRKR