THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A No. 95 of 2015

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

The appellant-M/s Pawan Cargo Pvt. Ltd., preferred the present appeal challenging the Stay Order No.20473/2015 dated 09.02.2015 passed by CESTAT, South Zonal Bench, Bangalore, in ST/Stay/21926/2014 in ST/21741/2014-DB. The following substantial questions of law are said to be arising from the order under challenge:

> "**(A) Whether, on the facts and in the circumstances of the case, the Order passed by the CESTAT is liable to be set aside as it contains no reasons as to how the show cause notice dated 12.03.2012 is within the period of limitation for the period April, 2010 to September, 2010?**
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> **(B) Whether, on the facts and in the circumstances of the case, the CESTAT ought to have directed waiver of pre-deposit?**"

2. Brief facts of the case are as follows:

The appellant is a firm engaged in hiring of various equipments such as mobile cranes, crawler cranes etc., and is registered on the rolls of the respondent for payment of Service Tax for the services rendered under the category of "Supply of Tangible Goods Service" and "Erection, Commissioning and Installation Service". On the presumption that as per Notification No.25/2007 ST dated 22.05.2007, Service Tax is exempted in respect of equipment services provided to those who are engaged in construction of ports, or in connection with exports, the appellant has not paid service tax for such services rendered to some of its customers. While so, the Additional Commissioner, Customs & Central Excise issued a Show Cause Notice to the appellant on 12.03.2012 stating that Service Tax is exempted only for service providers engaged in construction of ports and such exemption is not applicable in the case of appellant and hence sought explanation from the appellant to show cause as to why an amount of Rs.12,29,809/- should not be demanded towards Service Tax under “Supply of Tangible Goods Service” along with applicable interest and penalty under the provisions of the Finance Act, 1994 (for short, ‘the Act’). The appellant submitted reply to the show cause notice. The Additional Commissioner, after affording an opportunity of hearing, by way of Order-in-Original dated 23.08.2012 confirmed the demand of Service Tax of Rs.12,29,809/- along with applicable interest and penalty of an equal amount under Section 78 of the Act along with penalty of Rs.5,000/- under Section 77 of the Act. Aggrieved, the appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals), vide Order-in-Appeal dated 21.02.2014, modified the Order-in-Original to the extent that the Service Tax was reduced to Rs.11,14,968/- along with interest liability on the modified figure. The penalty of equal amount levied under Section 78 of the Act was set aside, while upholding the penalty of Rs.5,000/- under Section 77 of the Act. The appellant preferred a further appeal before CESTAT, South Zonal Bench, Bangalore, along with a Stay application seeking stay of recovery of amount. The Tribunal, by the impugned order, directed the appellant to deposit the entire Service Tax amount within twelve weeks from the date of the order, subject to which the pre-deposit of interest and penalty shall stand waived and its recovery stayed. Questioning the same, the present appeal is filed.

3. Heard learned counsel for the appellant and the learned Standing Counsel for the Department.

4. A perusal of the impugned order would show that the learned Tribunal, after hearing both sides, has found that the Service tax of Rs.11,14,968/- has been confirmed by the Department on the ground that by giving cranes on hire, the appellant has provided services falling under the category of "Supply of Tangible Goods". The Tribunal also recorded in its order that the learned advocate submitted that services relating to Service Tax to the extent of Rs.3,70,800/- was provided to a person who was engaged in the export of final product, and that the appellant was required to deposit the duty and then claim refund of the same. With regard to the balance amount, the learned advocate had clarified that the crane was supplied to a person who was engaged in the construction of port and in terms of Notification No.25/2007-ST dated 22.05.2007, such services were exempted inasmuch as the same were provided in relation to the execution of works

contract; and that the learned advocate fairly agreed that an identical dispute was the subject matter of earlier Stay Order No.25641/2013 dated 26.04.2013 in the appellant's own case and that they were directed to deposit the tax falling within the period of limitation, and the tax liability is within the normal period of limitation. Considering the factual position, the learned Tribunal passed the impugned order directing the appellant to deposit the entire service tax.

5. Learned counsel for the appellant, except submitting that the appellant is facing financial hardship and that the impugned order is bad, has not placed any material before us to substantiate his contention. The ground of financial hardship has to be pleaded and proved, and, as could be seen from the grounds of appeal, there is no plea of financial hardship that would cause in the implementation of the order. Therefore, we do not see any reason to interfere with the impugned order and the appeal is liable to be dismissed. However, having regard to the facts and circumstances, we are inclined to grant time for a period of six weeks, from the date of receipt of a copy of this order, to comply with the condition imposed in the impugned order.

6. The appeal is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

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CHALLA KODANDA RAM, J

12th August, 2015

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