THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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CENTRAL EXCISE APPEAL No.134 of 2015

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

This appeal is preferred against the stay order passed by the Central Customs, Excise and Service Tax Appellate Tribunal (for brevity, 'CESTAT'), South Zonal Bench, Bangalore in ST/Stay/23132/2014 in Appeal No.ST/22706/2014-DB dated 23.07.2015. By the said order the CESTAT, while directing the petitioner herein to deposit Rs.50,00,000/- within a period of twelve weeks from the date of the order, observed that, subject to the said deposit, the balance amount of service tax and the entire amount of interest and penalty stood waived.

The application filed by the petitioner before CESTAT was under Section 35-F (ii) of Finance Act 2/2014 (for brevity, 'the Act'). The petitioner herein lodged the appeal before the CESTAT on 05.08.2014. Section 35-F of the Act, which hitherto required the appellant to deposit the entire disputed tax unless pre-deposit was waived by the Tribunal, was amended with effect from 06.08.2014 requiring the appellant to deposit only 7 ½% of the duty or penalty as the case may be. In the present case, the appeal was lodged, just a day before the amendment, on 05.08.2014.

Sri T.V.L.Narasimha Rao, learned counsel for the petitioner, would submit that the second proviso to Section 35-F of the Act, whereby the said provision was made inapplicable to stay applications and appeals pending before any appellate authority prior to the commencement of the Act, is *ultra vires* Article 14 of the Constitution of India. Reliance is placed, in this regard, on certain interim orders passed by the Rajasthan High Court. Amendment to a statutory provision would come into force only from that date, and not from a date prior thereto, unless the legislature has, either expressly or by necessary implication, given retrospective effect to the said provision. The mere fact that the said provision has been made applicable from the date on which it was enacted, does not render it *ultra vires* Article 14 of the Constitution of India. Accepting this submission of the learned counsel for the petitioner would mean that failure of the Legislature, to give restrospectivity to any legislation, must be construed as a violation of the equality clause under Article 14 of the Constitution of India. We are not persuaded to accept this contention urged on behalf of the petitioner.

Sri T.V.L.Narasimha Rao, learned counsel for the petitioner, would further contend that, while the appeal was lodged on 05.08.2014, it was numbered and listed before the Bench only thereafter; and it is the date on which the appeal was listed before the Bench which must be taken as the relevant date for application of Section 35-F (ii) of the Act. The second proviso specifically provides that the amended provision shall not apply to stay applications and appeals pending before any authority prior to the commencement of the Finance Act. The moment an appeal is lodged, before the appellate authority, the appeal must be held to be pending. This submission, urged on behalf of the petitioner, does not also merit acceptance.

While the submission of Sri T.V.L.Narasimha Rao, learned counsel for the petitioner, that the Tribunal has the power to waive pre-deposit in its entirety, even under the pre-amended provision, has considerable force, the fact remains that it is only in cases where undue hardship is caused to the appellant would the Tribunal, ordinarily, exercise its discretion to waive pre-deposit in its entirety.

Sri O.Swaroop, learned counsel appearing on behalf of Sri Gopalakrishna Gokhale, learned Standing Counsel for the Central Excise Department, would draw our attention to paragraph No.4 of the impugned order from which it is evident that the petitioner had collected the entire sum of Rs.81,00,000/- towards development charges. We find considerable force in the submission of Sri O.Swaroop, learned counsel, that the Tribunal has shown indulgence to the petitioner and, though they had collected the entire amount, they were required, by the impugned order, only to deposit Rs.50,00,000/-. We find no error in the exercise of discretion by the CESTAT warranting interference in appeal.

Since Sri T.V.L.Narasimha Rao, learned counsel for the petitioner, submits that the 12 week period for pre-deposit expires on 15.10.2015, we consider it appropriate to extend the time for pre-deposit by another four weeks from today. Failure on the part of the petitioner, to deposit the amount within four weeks from today, would result in automatic vacation of the stay granted by CESTAT.

Subject to the aforesaid observations, the appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

14th October, 2015.

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