THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

C.E.A. No. 114 OF 2015

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal under Section 35(G) of the Central Excise Act, 1944 (for short 'the Act') is preferred against the order passed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Bangalore, in Miscellaneous Order No.23416/2014, dated 25.09.2014 in Appeal No.ST/1283/2011.

On an application made by the respondent-assessee under Section 35F of the Act, the CESTAT, in Stay Order No.1021/2012 dated 12.06.2012, directed the respondent herein to pre-deposit a sum of Rs. 2 Crores, and to report compliance. Thereafter, the counsel for the respondent herein filed Appeal No.ST/1283/2011 before the CESTAT, produced evidence of deposit of Rs.50,00,000/-, and sought further time of four weeks to deposit the balance amount. The CESTAT, by its order dated 27.12.2012, extended the period for pre-deposit, and directed the respondent herein to pre-deposit the balance amount of Rs.1.5 Crores within four weeks, and to report compliance. It is not in dispute before us that the order of the CESTAT, in Appeal No.ST/1283/2011 dated 27.12.2012 granting the respondent herein four weeks time to pre-deposit the balance amount of Rs.1.50 Crores, was complied with.

Curiously, the appellant herein filed a Miscellaneous Application contending that, as the CESTAT had failed to dispose of the appeal within six months, the order of partial waiver of predeposit should be vacated. By the order under appeal dated 25.09.2014, the CESTAT observed that the original stay orders were passed by them more than six months ago; there was no change in circumstances warranting review; and the pendency of the appeals was not attributable to the respondent herein.

Before us Dr. K. Manmadha Rao, learned counsel for the appellant, places reliance on Section 35C(2A) of the Act in support of his submission that the CESTAT ought to have disposed of the main appeal within six months and, on their failure to do so, the earlier order, waiving the pre-deposit in part, would automatically stand vacated.

We must express our inability to agree. Section 35 C relates to the orders of the Appellate Tribunal and, under sub-Section 2(A) thereof, the Appellate Tribunal is required, where it is possible to do so, to hear and decide every appeal within a period of three years from the date on which such appeal is filed. Under the proviso thereto, where an order of stay is made, in any proceedings relating to an appeal filed under Section 35B (1), the Appellate Tribunal shall dispose of the appeal within a period of 180 days from the date of such order.

While a statutory obligation is cast on the CESTAT to dispose of an appeal within 180 days in cases where an order of stay is passed, failure on the part of the CESTAT to decide the main appeal within the said period would not, in the absence of any specific provision in this regard, result in the earlier order of stay being vacated. While failure on the part of the CESTAT to comply with the statutory obligations under the proviso to Section 35(2A) may, possibly, enable the writ jurisdiction of this Court being invoked and a writ of mandamus being sought, that would not mean that the order of stay passed earlier by the CESTAT would stand vacated for its failure to dispose of the appeal within the stipulated period of six months. The CESTAT has, in the order under appeal, observed that failure to dispose of the appeal was for no fault on the part of the respondent assessee.

We see no error in the order, much less a substantial question of law, warranting interference in appeal under Section 35(G) of the Act. Suffice it, if the CESTAT is requested to dispose of the appeal with utmost expedition. Subject to the above observations, the appeal fails and is, accordingly, dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

Date: 02.12.2015

va