

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 14550 of 2015

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

Questioning the action of the 3rd respondent in issuing notices dated 04.08.2014 and 22.04.2015, this writ petition is filed.

2. The case of the petitioner is that the petitioner is a Society registered under the A.P. (Telangana Area) Public Societies Registration Act, of 1350 Fasli, and is involved in training and research with respect to pollution related matters. The petitioner was demanded to pay Service Tax of Rs.27,36,676/- on the ground that the petitioner provides technical testing and analysis services as defined under Section 65(25) read with Section 65(105)(zzc) of the Finance Act, 1994. The ultimate tax demanded was Rs.20,92,262/-. As against the said demand, the petitioner approached CESTAT, South Zonal Bench, Bangalore, by filing Appeal No.ST/25772/2013-DB. The application came to be dismissed on 10.09.2013 for non-compliance of the order dated 12.07.2013, wherein a sum of Rs.20,92,262/- was directed to be deposited along with interest, within six weeks time and report compliance by 10.09.2013.

3. Learned counsel for the petitioner submits that the petitioner could not make the deposit as it is a Government organisation and solely depending on the budgetary support from the Government. Considering the fact that they did not make pre-deposit, the petitioner approached the CESTAT by filing an application seeking restoration of the appeal which was dismissed for default on 10.09.2013, along with an application seeking waiver/modification of the pre-deposit order dated 12.07.2013. The learned counsel submits that the said

application is still pending and is not yet listed. In the meanwhile, the respondent authorities have issued notices dated 04.08.2014 and 22.04.2015 threatening to take coercive action. Learned counsel further submits that, as a matter of fact, the factum of petitioner being a Government organization and their involvement in providing training and research services is not for commercial purposes, and the same has been *prima facie* recognized by the Tribunal on earlier occasion and, in fact, by order dated 22.07.2007, and in similar circumstances, waiver of pre-deposit was granted on condition of the petitioner paying Rs.5,00,000/-. Learned counsel for the petitioner, on instructions, submits that the petitioner would be able to make pre-deposit of Rs.5,00,000/- and prays for a direction to the Tribunal to restore the appeal and consider the application filed for waiver of pre-deposit.

4. Having regard to the facts and circumstances of the case, interests of justice would be served if a direction is issued to the 1st respondent-CESTAT, to take on file the restoration application and pass appropriate orders considering the submissions to be made by the petitioner. The Tribunal may consider the circumstances and factual data that may be furnished by the petitioner and consider passing of appropriate orders having regard to the earlier orders dated 22.07.2007. The entire exercise shall be completed as expeditiously as possible, preferably within eight weeks from the date of receipt of this order. Till such time the Tribunal disposes of the restoration application, there shall not be any coercive action against the petitioner.

5. Accordingly, the writ petition is disposed of. No costs. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

03rd July, 2015

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