*** THE HON'BLE SRI JUSTICE G.CHANDRAIAH**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ C.E.A.NO.69 OF 2015

% 01.07.2015

\# Share Microfin Limited

...APPELLANT

VERSUS

$ The Commissioner of Customs, Central Excise and Service Tax, Hyderabad-III Commissionerate, L.B.Stadium Road, Basheerbagh, Hyderabad.

...RESPONDENT

< GIST:

> HEAD NOTE:

!**Counsel for Appellant: Sri Smt.K.Udaya Sri**

^**Counsel for the Respondent: Jalakam Sathyaram**
(Standing Counsel for CB Excise)

? Cases referred

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A.NO.69 OF 2015

JUDGMENT: {Per the Hon'ble Sri Justice Challa Kodanda Ram}

The final order dated 26.11.2014 passed by the Commissioner, Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore dismissing the appeals filed by the petitioner is challenged before us.

The brief averments in the appeal are that petitioner came to be assessed under Finance act on account of service tax and was demanded with a sum of Rs.6,76,27,578/- for the period 2004-09 by order dated 25.11.2010, a sum of Rs.1,38,48,158/- for the period 2009-10 by order dated 24.08.2011 and a sum of Rs.70,71,764/- for the period 2010-11 by order dated 31.08.2012. In addition to service tax, interest on tax amount and equal amount of penalty of tax was also made and demanded from the petitioner. Aggrieved by the orders, as passed by the Commissioner, the petitioner filed appeals before the Tribunal. Along with the appeals, the petitioner sought waiver of pre-deposit as required to be made as a precondition for the appeals to be admitted. The waiver of pre-deposit application was rejected by the Tribunal by its order dated 23.05.2013, however, six weeks time was granted for complying with the pre-deposit. Thereafter, by order dated 01.08.2013, a further extension of time was granted for compliance up to 10.10.2013. The petitioner was directed to report the same by 10.10.2013. By 09.10.2013, the petitioner paid a sum of Rs.7,31,90,749/- in instalments and informed the said fact through letter dated 09.10.2013 addressed to the Deputy Registrar. Therefore, the petitioner filed an application before the Tribunal vide Miscellaneous Order No.25998 of 2013 seeking clarification whether the petitioner is required to pre-deposit in addition to tax, penalty and interest as well. The Tribunal, by order dated 04.04.2014, while refusing to modify the order passed by it earlier, clarified that the pre-deposit amount, which has been directed, would include the total amount as demanded by the order in appeal. However, taking into consideration all the relevant facts, the Tribunal granted a further extension up to 17.07.2014 to pay the compliance amount, which is forming part of penalty and interest. Aggrieved by the said order, the petitioner approached this Court by filing C.E.A.Nos.80 and 94 of 2014. This Court, by order dated 09.09.2014, clarified that the penalty could not be called as a tax liability and on account of the fact there is appeal pending against the very levy, the issue with regard to penalty would not form part of the tax liability and thereby, directed the petitioner to make the pre-deposit of the tax and interest component. For complying with the said order, a further period of four weeks time was granted. On 08.10.2014, the petitioner paid a sum of Rs.4,30,94,956/-. The factum of payment of Rs.4,30,94,956/- was informed to the Deputy Registrar by addressing a letter on 09.10.2014. Thereafter, once again a letter was addressed on 29.10.2014. Petitioner confirmed payment of a total sum of Rs.7,87,32,509/- in addition to payment of Rs.3,75,53,196/- towards interest on tax liability. The petitioner also sought to clarify that there is an excess demand on the petitioner amounting to Rs.86,89,471/-. Thereafter, as a matter of abundant caution, petitioner also paid a sum of Rs.98,14,993/- on 03.11.2014. Before the Tribunal, the matter was listed on 26.11.2014 for noting the compliance. Tribunal dismissed the appeals on the ground that there was no compliance of the order of the High Court dated 09.09.2014 wherein time was granted up to 08.10.2014 only whereas petitioner deposited a sum of Rs.98,14,993/- on 03.11.2014. Obviously, the Tribunal was under the impression that there was a short payment of Rs.98,14,994/- which was deposited by the petitioner on 03.11.2014 and thereby, there is no compliance of the order of this Court dated 09.09.2014 in letter and spirit. Holding that there is no compliance of the order of this Court, the appeals were rejected on that ground. This order is under challenge before this Court.

Learned counsel for the appellant submits that there is an error committed by the Tribunal in appreciating the facts. Though initially the Tribunal by its order dated 23.05.2013 directed tax, interest and penalty to be deposited on account of the order of this Court dated 09.09.2014, petitioner is required to deposit only the amounts covering tax and interest. In the affidavit, the appellant has categorically set out the total tax amount payable would be Rs.8,85,47,501/- and the interest component would also work out to a sum of Rs.2,77,35,205/- aggregating to Rs.11,62,82,706. As against the same, petitioner has deposited a total sum of Rs.12,61,00,698/-, which is much more than the amount required to be deposited.

On the other hand, learned counsel for the Department, Sri Jalakam Satyaram, supports the order of the Tribunal and submits that there is non-compliance of the order of this Court by not depositing the amount as directed and the same is admitted by the appellant themselves by depositing a sum of Rs.98,14,993/- on 03.11.2014, though the four weeks' time granted by this Court expired on 08.10.2014 itself.

Having perused the record, we find that practically there is no dispute with regard to the facts as stated. More importantly, a counter affidavit has been filed by the respondent. There is no specific denial of various payments, which have been mentioned and the calculations, which have been shown with regard to the principal amount of tax and the interest, which is payable. The simple arithmetic, which ought to have been carried out by the Tribunal to verify the tax amount and the interest that is required to be paid has not been undertaken by the Tribunal. The Tribunal was carried away with the fact of the petitioner himself paying Rs.98,14,993/- on 03.11.2014 and thereby assuming that there was a non-compliance of the orders of this Court dated 09.09.2014. Obviously, the factual matrix, which has been set out above does not lead to such conclusion being drawn by the Tribunal as correct. In the facts of the present case and considering the fact that total demanded amount and interest have already been deposited, interest of justice would require to allow the petitioner to avail the right of appeal.

Accordingly, the appeal is allowed and the impugned order dated 26.11.2014 is set aside by restoring the appeals to the Tribunal for disposal in accordance with law after giving opportunity to the parties. It is made clear that the amounts deposited shall be subject to the result of the appeals. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(G.CHANDRAIAH, J)

(CHALLA KODANDA RAM, J)

1st July 2015
Note: LR Copy be marked
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