

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CENTRAL EXCISE APPEAL NO.61 OF 2015

DATED:30.4.2015

Between:

M/s. Aruna Constructions

Represented by its Proprietor

Sri D.R. Krishna Raju

Office at Satya Sri Devi Enclave

D.No.47-9-24/11, Flat No.102

3rd Lane, Dwarakanagar

Visakhapatnam

Andhra Pradesh

... Appellant

And

Commissioner of Central Excise and Service Tax

Visakhapatnam-I Commissionerate

Central Excise Buildings

Port Area

Visakhapatnam

... Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

-

CENTRAL EXCISE APPEAL NO.61 OF 2015

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JUDGMENT: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is admitted on the following substantial question of law.

“Whether the learned Tribunal can decide the application for waiver of pre-deposit without having a statement of undue hardship, which is concomitant to exercise the jurisdiction?”

We have seen the application made by the appellant before the learned Tribunal and we have not been able to find any statement of undue hardship therein. Then, how the application can at all be entertained by the Tribunal is a subject matter of deep enquiry but we are not going into that fact of entertaining the application asking waiver of pre-deposit. According to us, unless the application is made pleading undue hardship the same cannot be entertained, not to speak of passing any order either adversely or beneficially. This sort of exercise is without jurisdiction. Therefore, we set aside the impugned judgment and order of the learned Tribunal and also dismiss the application made. However, it would be open for the appellant to make a fresh application for waiver of pre-deposit setting up the ground as required under the law. If such an application is made within fortnight from date, then that fresh application shall be considered by the learned Tribunal without being swayed or influenced by the impugned judgment and order. If no such application is made, then the issue will be a closed chapter.

Therefore, we direct the learned Tribunal to keep the appeal alive for a period of fortnight from date.

The appeal is accordingly disposed of.

Pending miscellaneous petitions, if any, shall stand closed. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

30.4.2015

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