THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

C.E.A. No.126 of 2014

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DATED:30.01.2015

Between:

The Commissioner of Customs, Central Excise & Service Tax,
Hyderabad-II Commissionerate,
Hyderabad.

… Appellant

And

M/s. IVRCL-KBL JV (Joint Venture),
Hyderabad.

….Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

C.E.A. No.126 of 2014

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

This appeal is sought to be preferred and admitted by the Revenue against the order of the learned Tribunal granting extension of the interim order earlier as prayed for. The learned Tribunal, by order dated 30.10.2013, has extended the interim order passed earlier, i.e., on 4.10.2011, as prayed for, meaning thereby, according to the learned counsel for the Revenue, overlooking the mandatory provision under Section 35-C(2A) along with the provisos contained as inserted upto 2014. He submits that such order should not have been passed contrary to the mandate of the statute.

Mr. S.R. Ashok, learned senior counsel appearing for the assessee submits that once the learned Tribunal has come to a fact finding that the pendency of the appeal is not attributable to the appellant, this Court will not admit the appeal as it has been held by the Supreme Court by interpreting the above provisions that where the assessee is not at fault with regard to the disposal or pendency of the appeal, then the power of the Tribunal is not taken out by the aforesaid provision. In this connection, he sought to place reliance on the judgment of the Supreme Court in the case of **Commissioner of Customs and Central Excise vs. Kumar Cotton Mills Pvt. Ltd.,**[1] wherein the Supreme Court observed in paragraph-6 of the judgment as follows:

> "The sub-section which was introduced in terrorem cannot be construed as punishing the assessees for matters which may be completely beyond their control. For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed within the time specified. The reasoning of the Tribunal expressed in the impugned order and as expressed in the Larger Bench matter, namely IPCL vs. Commissioner of Central Excise, Vadodara (supra) cannot be faulted. However we should not be understood as holding that any latitude is given to the Tribunal to extend the period of stay except on good cause and only if the Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Tribunal for reasons not attributable to the assessee."

He, thereafter, argued basing on the judgment of the learned Customs, Excise and Service Tax Appellate Tribunal, Principal Bench of New Delhi in the case of **Haldiram India Pvt. Ltd., vs. C.C.E.**[2]**,** wherein the judgments of the Madras and Gujarat High Courts in the context of the amendment made, have been noted and followed the same principle as laid down by the Supreme Court in the case of **Kumar Cotton Mills**. We also notice that the Gujarat High Court has also taken a view on similar lines.

Under the circumstances, though the learned Tribunal recorded those judgments while granting interim order, but found that there has been no fault on the part of the assessee and accordingly granted extension.

In view of the aforesaid legal position, as set out by the Supreme Court and the Madras and Gujarat High Courts as quoted above, we do not find any reason to admit the appeal.

The appeal is accordingly dismissed. However, we desire the learned Tribunal to dispose of the appeal as early as possible, preferably, within a period of three months from the date of communication of this order. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

30th January, 2015

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[1] 2005(180)ELT 434 (S.C.)

[2] 2014(309)ELT 81 (Tri. Delhi)