IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 26 of 2015 (O&M)

Date of Decision: 29.9.2015

Commissioner, Central Excise and Service Tax, Faridabad
....Appellant

Versus

M/s The Printer House P. Ltd., Ballabgarh, Faridabad
...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**
**HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Sukhdev Sharma, Advocate for the appellant.

**AJAY KUMAR MITTAL, J.**

1. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 against the order dated 9.12.2014 (Annexure A-4) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal"), raising the following substantial questions of law:-

i) Whether the Tribunal is correct in holding that no Pre-Deposit is required in terms of Section 35-F of the Central Excise Act, 1944?

ii) Whether the Tribunal has exercised the discretion properly and judiciously in terms of

Section 35-F of the Act ibid as well as the settled law on the complete waiver of pre-deposit?

iii) Whether the Tribunal is correct in holding that the service/transaction falls out of the ambit of Section 65(55b)(a) of the Finance Act, 1994 at the stage of granting waiver of pre-deposit?

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. During the course of audit conducted from 16.7.2009 to 21.7.2009 by the CERA Audit, Chandigarh and on 9.2.2009, 10.2.2009 and 14.2.2009 by the Central Excise Department for the years 2007-08 and 2008-09, it was found that the assessee had entered into an agreement with M/s Solna Offset AB, Sweden for purchase of technical design, manufacturing and documents and process technical and to make payment of SEK 3 millions (Sweden currency) for technical drawings. The assessee made a total payment of ₹ 442.41 lacs during the period of 2006-07 to 2009-10 to M/s Solna Offset Sweden. Since the said designs were covered under the "Intellectual Property Rights" as defined under Section 65(55a) of the Finance Act, 1994 (for brevity "the 1994 Act"), the respondent was liable to pay service tax to the tune of ₹ 43.43 lacs for the period in question. Accordingly, a show cause notice dated 12.11.2010 (Annexure A-1) was issued to the respondent for recovery of ₹ 43.43 lacs under Section 68 read with Section 73 of the 1994 Act along with interest and penalty. The adjudicating authority vide order dated 31.5.2012 (Annexure A-2) confirmed the demand of ₹ 31.48 lacs along with interest and also imposed penalty of the equal amount along with penalty of ₹ 5000/-

under Section 77 of the 1994 Act. Feeling aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who vide order dated 19.11.2012 (Annexure A-3) upheld the order of the adjudicating authority and dismissed the appeal. Still dissatisfied, the respondent filed an appeal along with stay application before the Tribunal. The Tribunal vide order dated 25.8.2014 dismissed the stay application on account of non-representation on behalf of the assessee and confirmed the order passed by the Commissioner (Appeals) by directing the respondent to deposit the assessed liability. Thereafter, the respondent filed misc. application before the Tribunal for recalling of the order dated 25.8.2014. The Tribunal vide order dated 9.12.2014 (Annexure A-4) restored the stay application and granted full waiver of pre-deposit holding that the transaction falls outside the ambit of Section 65(55b)(a) of the 1994 Act. Hence, the present appeal.

3. Learned counsel for the revenue submitted that the Tribunal has granted unconditional stay without safeguarding the interest of the revenue. It was further submitted that the Tribunal has wrongly held that the service/transaction falls outside the ambit of Section 65(55b)(a) of the 1994 Act at the stage of waiver of pre-deposit.

4. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

5. The Tribunal on prima facie of the agreement dated 20.12.2006, came to the conclusion that there was a strong prima facie case in favour of the assessee as there was permanent transfer of intangible goods from the Swedish entity to the assessee and, thus, transaction falls outside the scope of Section 65(55b)(a) of the 1994 Act. Thus, the Tribunal finding strong prima facie case in favour of the

assessee granted waiver of pre-deposit in full and stayed all further proceedings for realization of the adjudicated liability during the pendency of the appeal. The appeal before the Tribunal raises a debatable issue.

6. No illegality or perversity could be pointed out by the learned counsel for the appellant in the findings recorded by the Tribunal which may warrant interference by this Court. Accordingly, no substantial question of law arises in this appeal.

7. In view of the above, there is no merit in the instant appeal and the same is hereby dismissed. Needless to say, nothing observed either in the order of the Tribunal or this Court shall be taken to be expression of opinion on the merits of the controversy. However, the Tribunal is directed to dispose of the appeal expeditiously in accordance with law.

8. The appeal is also time barred. An application bearing C.M. No. 18246-CII of 2015 for condonation of delay of 23 days in filing the appeal has been filed. Since the appeal has been dismissed, no order is being passed on the application for condonation of delay.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**September 29, 2015** **(RAMENDRA JAIN)**
gbs **JUDGE**