IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No.29 of 2015 (O&M)

Date of decision: December 14, 2015

M/s MPA Marketing Pvt. Limited

……Appellant

Vs.

Customs, Excise and Service Tax Appellate Tribunal and another

…..Respondents

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

1. Whether Reporters of 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?

Present: Mr.Ankit Parti, Advocate for
Mr. Sudeep Singh Bhangoo, Advocate for the appellant.
Mr. Sunish Bindlish, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. The delay in refiling the appeal is condoned.

2. This appeal has been filed by the assessee-appellant under Section 35G of the Central Excise Act, 1944 (in short, "the 1944 Act") as made applicable to service tax vide section 83 of the Finance Act, 1994 (in short, "the 1994 Act") against the final order dated 30.5.2014, Annexure A.6 in Appeal No.ST/58588/2013-CU(DB), claiming following substantial questions of law:-

i) Whether the Hon'ble Tribunal was correct in dismissing the appeal for non compliance of stay order when the stay order stood complied with even though there was a delay of five days in depositing the amount?

ii) Whether the Tribunal ought to have considered that the stay order stood substantively complied with when the amount stood deposited prior to the date of reporting compliance as the same could not be deposited in time due to financial crisis?"

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant company is engaged in the trading/marketing of photographic articles like cameras, photographic papers and films. It is also engaged in providing of photography services w.e.f 1.3.2005. In the month of January 2005, the appellant decided to start photography work and applied for the service tax registration which was issued to it on 15.1.2005. Thereafter, it procured a photograph colour lab which became operational on 1.3.2005. The appellant provided photography services valued at ₹ 5,33,000/- in the month of March 2005 on which it discharged service tax liability of ₹ 54,336/-. It filed the service tax returns for the half year ending 31.5.2005 showing its liability of service tax. It was categorically mentioned in the returns that the company started its operation w.e.f 1.3.2005. During the course of audit, the department made a comparison of the figures given in the balance sheets with those in the service tax returns. The Department issued a show cause notice dated 24.9.2009, Annexure A.1 wherein service tax of ₹ 45,53,852/- was demanded from the appellant. The appellant filed reply to the show cause notice pleading that no service tax was demandable as it was also engaged in trading of various types of items which were included in the gross turnover shown in the balance sheets. The adjudicating authority did not accept the said plea and confirmed the demand of service tax of ₹45,53,852/- alongwith interest and various penalties. Aggrieved by the order, the appellant filed appeal before the Commissioner (Appeals). Vide order dated 25.3.2013, Annexure A.3, the Commissioner (Appeals)

deducted the amount of turnover shown in the sales tax return but confirmed the demand of service tax on the balance amount of ₹ 2,50,14,954/-. Still not satisfied, the appellant filed appeal before the Customs, Excise and Service Tax Appellate Tribunal (in short, "the Tribunal") contending that the service tax could not be demanded as it was not providing any services for the period prior to March 2005. However, it submitted the copies of the sale tax returns even for the earlier three quarters which reconciled figures with that of the income tax returns. The appellant also filed a stay application alongwith the appeal before the Tribunal. The Tribunal directed the appellant to deposit a sum of ₹ 12,50,000/- alongwith proportionate interest within a period of eight weeks and report compliance on 7.1.2014 vide order dated 31.10.2013, Annexure A.4. The appellant filed appeal before this court against the stay order passed by the Tribunal. This court vide order dated 7.2.2014 directed the appellant to deposit a sum of ₹ 5 lacs which was deposited by the appellant. This court disposed of the appeal vide order dated 19.3.2014, Annexure A.5 and directed the appellant to deposit further an amount of ₹ 3 lacs by 30.4.2014. The appellant due to financial hardship could not deposit the amount by 30.4.2014. However, it deposited the said amount on 5.5.2014. The appellant filed compliance report before the Tribunal. The Tribunal dismissed the appeal on 30.5.2014, Annexure A.6 on the ground that the amount of ₹ 3 lacs was to be deposited by 30.4.2014 but the same was deposited on 5.5.2014 and there was no order of this court extending the time stipulated in the final order. Hence the instant appeal by the appellant.

4. We have heard learned counsel for the parties.

5. On perusal of the averments made in the appeal and after hearing learned counsel for the parties, we find that there is a delay of five days in depositing the amount as directed by this Court. The appellant deposited the amount on 5.5.2014 instead of 30.4.2014 due to financial hardship. Examining the factual matrix herein, there appears to be no malafide on the part of the appellant. Thus, keeping in view the totality of facts and circumstances of the case, the delay in depositing the amount is condoned. The appeal filed by the appellant shall be heard on merits by the Tribunal in accordance with law. Consequently, the present appeal stands disposed of.

(Ajay Kumar Mittal)
Judge

December 14, 2015 **(Ramendra Jain)**
'gs' **Judge**