IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 38 of 2015 (O&M)

Date of Decision: 23.12.2015

M/s Ballamgarh Co-op L/C Society, Ropar

....Appellant.

Versus

Commissioner of Central Excise, Commissionerate Chandigarh-II

...Respondent.

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

PRESENT: Mr. Deepak Gupta, Advocate for
Mr. Jagmohan Bansal, Advocate for the appellant.

Mr. Sunish Bindlish, Advocate with
Ms. Shriya Kalra, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 against the order dated 1.10.2015 (Annexure A-6) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") directing the assessee to deposit entire amount of service tax amounting to ₹ 4,46,562/- as pre-deposit.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. In the year 2005, the appellant entered into a contract of cleaning various parts of M/s Guru Gobind Singh Super Thermal Plant, Ropar (For brevity "the Thermal Plant"). As per conditions of work order, the service recipient was

required to pay service tax. The appellant did not collect or paid service tax as the Thermal Plant authorities had confirmed that their activities were not commercial or industrial and as such cleaning of their premises was not taxable. The Superintendent (Preventive), Central Excise Ropar vide letter dated 27.5.2009 (Annexure A-1) asked the Chief Engineer of Thermal Plant that whether any industrial or trading activity is being carried out by them; whether the work being done by co-operative societies of cleaning is of technical nature and whether it pertains to plant or machinery or office or residential area in Thermal Plant. In pursuance thereto, the office of Deputy Chief Engineer opined that the work of cleaning of station building/service building cleaning of technical and non-technical was of non-technical nature and the cleaning pertained to office and other areas in the plant/out the plant and it did not involve cleaning of machinery or equipment. Further, it was opined that the activities of cleaning were not in respect of commerce or industry. However, the respondent issued a show cause notice dated 15.9.2010 for the payment of service tax amounting to ₹ 9,86,918/- (Service Tax ₹ 9,60,196/- + Education Cess ₹ 19,204/- + S&H Education Cess ₹ 7518/-) along with interest and penalty for the period from June 2005 to March 2010. The appellant filed its reply dated 31.7.2011. The adjudicating authority vide order dated 23.9.2011 (Annexure A-2) confirmed the said demand and imposed penalty of equal amount under Section 78 of the Act and further imposed penalty of ₹ 2000/- under Section 77 of the Act. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who vide order dated 17.12.2012 (Annexure A-3) reduced the amount of service tax from ₹ 9.86 lacs to ₹ 4.46 lacs and accordingly reduced the amount of penalty under Section

78 of the Act. Still dissatisfied, the appellant filed an appeal (Annexure A-4) along with an application for stay on 14.3.2013 (Annexure A-5) before the Tribunal. The Tribunal vide order dated 14.7.2015 dismissed the stay application in default. Thereafter, the appellant filed an application for re-calling the said order which was allowed vide order dated 1.10.2015. The Tribunal vide order dated 1.10.2015 (Annexure A-6) directed the appellant to deposit the entire amount of service tax, i.e. ₹ 4,46,562/- as pre-deposit. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the requirement of ₹ 4,46,562/- as a pre-deposit as directed by the Tribunal was unfair and excessive. He, however, submitted that the appellant has deposited a sum of ₹ 1,20,935/- on 11.12.2012, thus, making the deposit more than 50% of the total service tax demand.

4. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the Tribunal has rightly directed the appellant to deposit the entire amount of service tax.

5. This Court vide order dated 15.12.2015 while issuing notice of motion for 23.12.2015 directed the Tribunal not to dismiss the appeal of the assessee for want of pre-deposit in terms of order dated 1.10.2015 as the appellant had deposited more than 50% of the total service tax liability demanded from it.

6. The primary dispute that arises for consideration in this appeal relates to the quantum of pre-deposit to be made by the appellant as a condition precedent for the hearing of the appeal by the Tribunal. After hearing learned counsel for the parties and keeping in view the totality of the facts and circumstances of the case coupled with the fact

that the appellant has already deposited a sum of ₹ 1,20,935/- on 11.12.2015, thus, making total deposit of more than 50% of the total tax demand, the present appeal is disposed of by making the interim order dated 15.12.2015 absolute. The Tribunal is directed to hear the appeal on merits without insisting for any further deposit.

(AJAY KUMAR MITTAL)
JUDGE

December 23, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**