IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 17 of 2014

Date of Decision: 17.8.2015

M/s Kay Aar Bee Construction Company, Kurali

....Appellant.

Versus

Commissioner, Central Excise Commissionerate, Chandigarh-II

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Mr. Sukhdev Sharma, 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 (in short, "the Act") against the orders dated 30.8.2013 (Annexure A-9) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") and dated 3.4.2013 (Annexure A-7) passed by the Commissioner (Appeals).

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is engaged in erection of telecommunication towers and repair and maintenance of existing towers for various telecommunication companies. Acting on intelligence, an investigation was carried out by the Central Excise Division, Ropar. During the investigation, relevant information regarding services rendered and payments received by the assessee was called from various telecommunication companies and the concerned Range Officer was asked to confirm the status of the

assessee. It was confirmed that earlier a show cause notice was issued to the appellant for non-filing of ST-3 returns which was subsequently adjudicated in the year 2007 and a sum of ₹ 1000/- was imposed as personal penalty which was duly deposited. The Government issued a notification dated 20.6.2013 (Annexure A-1) exempting the value of all the taxable services as is equal to the value of the goods and materials sold by the service provider to the recipient of services. Another notification dated 1.3.2006 (Annexure A-2) was issued providing abatement of 67% of gross value if the service tax assessee does not avail the cenvat credit of duty in inputs or capital goods or cenvat credit of service tax on input services and the benefit of notification dated 20.6.2003 (Annexure A-1). The assessee in his statement dated 9.10.2010 (Annexure A-3) admitted that due to ill health, he could not attend the business. A show cause notice dated 1.8.2011 (Annexure A-4) was issued to the assessee for recovery of service tax to the tune of ₹ 29,84,848/- along with interest and penalty for the period from 5/2006 to 8/2010. The appellant replied to the said show cause notice vide letter dated 10.4.2012. The Additional Commissioner Central Excise vide order-in-original dated 24.4.2012 (Annexure A-5) confirmed the service tax amounting to ₹ 29,84,848/- along with interest and also imposed penalties of ₹ 5000/- under Section 77 of the Finance Act, 1994 and ₹ 29,84,848/- under Section 78 of the said Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Central Excise (Appeals) [for brevity "the Commissioner (Appeals)"] who vide order dated 17.12.2012 (Annexure A-6) imposed the condition of pre-deposit of ₹ 10,00,000/-. Since the appellant failed to deposit the said amount as a condition precedent, the Commissioner (Appeals) vide order-in-appeal dated 3.4.2013 (Annexure A-7) dismissed the said appeal. Feeling aggrieved, the appellant filed an appeal (Annexure A-8) before the Tribunal. The Tribunal vide order dated 30.8.2013 (Annexure A-9) dismissed the appeal of the appellant. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the requirement of ₹ 10,00,000/- as a pre-deposit as directed by the Commissioner (Appeals) was unfair and excessive. He, however, submitted that the appellant has deposited a sum of ₹ 5 lacs in terms of order dated 15.7.2014 passed by this Court.

4. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the amount as directed by the Commissioner (Appeals) was reasonable and justified.

5. 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 ₹ 5 lacs, we are of the opinion that the ends of justice would be met if the Commissioner (Appeals) is directed to hear the appeal on merits without insisting for pre-deposit of the remaining amount. Ordered accordingly.

6. The appeal stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

August 17, 2015
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(SHEKHER DHAWAN)
JUDGE