IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 23 of 2014 (O&M)

Date of Decision: 27.8.2015

Municipal Corporation, Ludhiana

....Appellant.

Versus

Commissioner of Central Excise and Service Tax, Ludhiana

...Respondent.

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

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?

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

Mr. D.D. 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 order dated 30.10.2013 (Annexure A-1) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”).

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a body corporate constituted under the Punjab Municipal Corporation Act, 1976 (for brevity “the 1976 Act”). The appellant charged licence fee and

advertisement tax under the 1976 Act. On 1.5.2006, the service of sale of space for time for advertisement was brought within the ambit of service tax. The respondent sought information from the appellant regarding their receipts from space sold/allotted for advertisement. The appellant supplied details of receipts and on that basis, the respondent formed an opinion that the appellant was liable to pay service tax. Accordingly, the respondent issued a show cause notice dated 17.8.2010 to the appellant for recovery of ₹ 1,71,46,656/- (₹ 1,66,83,629/- as Service Tax plus ₹ 3,33,673/- education cess plus ₹ 1,29,354/- as SHE Cess) along with interest as service tax. The appellant filed reply dated 18.11.2010 to the said show cause notice. The adjudicating authority vide order dated 21.3.2012 (Annexure A-3) confirmed the said demand of ₹ 1,71,46,656/-. Feeling aggrieved, the appellant filed an appeal (Annexure A-4) along with stay application before the Tribunal who vide order dated 30.10.2013 (Annexure A-1) granted stay subject to payment of the demand plus the corresponding interest thereon. The Tribunal vide order dated 7.1.2014 (Annexure A-2) dismissed the appeal of the assessee for non-compliance of the stay order dated 30.10.2013 (Annexure A-1). Hence, the present appeal.

3. Learned counsel for the appellant submitted that the requirement of ₹ 1,71,46,656/- as pre-deposit as a condition precedent for hearing of appeal was unfair and excessive. He, however, submitted that the appellant has deposited a sum of ₹ 68,58,662/-, i.e. 40% of the service tax in terms of order dated 18.2.2015 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 Tribunal 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 ₹ 68,58,662/-, i.e. 40% of the liability, we are of the opinion that the ends of justice would be met if the appeal is heard on merits without insisting for pre-deposit of the remaining amount.

6. It was pointed out that vide order dated 7.1.2014 passed by the Tribunal, the appeal was dismissed for non-compliance of stay order dated 30.10.2013 (Annexure A-1). Accordingly, order dated 7.1.2014 is set aside. The Tribunal shall now proceed to adjudicate the appeal on merits in accordance with law.

7. The appeal stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

August 27, 2015
gbs

(RAMENDRA JAIN)
JUDGE