NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 19 of 2016

M/s. Vimal Construction through its Partner Mr. Varun Jain aged about 32 years son of Vimal Chand Jain resident of 5 South Avenue Choubey Colony Raipur Chhattisgarh Pin-492001

---- Appellant

Versus

Commissioner of Central Excise, Customs and Service Tax Raipur Central Excise Building Dhamtari Road Tikarapara Raipur Chhattisgarh

---- Respondent

For Appellant	:	Shri Shashank Dubey, Senior Advocate with Shri Siddharth Dubey and Shri Rakesh Dubey, Advocates.
For Respondent	:	Shri Maneesh Sharma, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

08/02/2016

1. The present appeal under Section 35G of the Central Excise Act, 1944 assails order dated 1.10.2015 dismissing Appeal No. ST/52017/2014-CU(DB) upon failure of the Appellant to comply the interim order dated 17.3.2015 granting waiver of pre-deposit of other adjudicated liabilities directing deposit of Rs. 75 Lacs only pending disposal of the appeal.

2. In Writ Petition (T) No.128 of 2014, protection was granted against coercive action till disposal of the stay application by the Tribunal. Subsequently, the Appellant preferred Tax Case No.16 of 2015 against the interim order dated 17.3.2015. This Court on 1.7.2015 noticed that in the stay application no undue hardship had been pleaded. Considering the alternative submission for extension of time for deposit, the time fixed by the Tribunal was extended by six

weeks, failing which the Tribunal was at liberty to proceed in accordance with law.

3. On 13.8.2015, the Appellant filed a fresh application before the Tribunal that it had deposited a sum of Rs. 7.50 Lacs on 11.8.2015 and on account of paucity of funds/financial hardship was not in a position to make full pre-deposit, seeking six weeks further extension. We have serious reservations about the bonafides of the Appellant in having moved the Tribunal for extension of time after the order of this Court dated 1.7.2015, as if the Tribunal could sit in judgment over the orders of this Court. The matter did not rest there. The Appellant then filed M.C.C. No.675 of 2015 for modification of the order dated 1.7.2015 in Tax Case No.16 of 2015 which was declined interference on 19.8.2015. The Tribunal then dismissed the appeal by the impugned order dated 1.10.2015 for failure to comply its order dated 17.3.2015 for pre-deposit.

4. Learned Senior Counsel for the Appellant submits that they are willing to make pre-deposit of Rs.75 Lacs after appropriate adjustment of Rs.7.50 Lacs deposited by them.

5. Learned Counsel for the Respondent relies on (2009) 17 SCC 626, (Dinesh International Limited Vs. Union of India) and submits that in the facts of the present case, appropriately the Appellant must be required to deposit the due amount under the order dated 17.3.2015 with 9% interest from that date.

6. Having considered the facts and circumstances of the present case, the conduct of the Appellant, the submission on behalf of the Respondent, in view of the order dated 1.7.2015, we deem it proper to direct deposit of the balance amount of Rs. 75 Lacs after adjustment of Rs. 7.50 Lacs already stated to have been deposited, along with interest at the rate of 9% to be calculated from the day the period of six weeks directed on 1.7.2015 in Tax Case No. 16 of 2015 expired till the date of actual deposit.

7. As prayed on behalf of the Appellant, time for compliance granted for four weeks. If the Appellant deposits the amount in the manner as aforesaid within four weeks and moves an application before the Tribunal within the same period, it is expected that the Tribunal shall restore the appeal and dispose it on merits expeditiously. It the Appellant fails to move the Tribunal with proof of deposit within four weeks, the order dated 1.10.2015 of the Tribunal shall call for no interference.

8. The appeal is disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Anu