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HIGH COURT OF CHHATTISGARH, BILASPUR

TAX CASE (C) No. 37 of 2016

- M/s Soni Construction A Proprietorship Concern, Through The Proprietor, Sanjay Soni, Son Of Shri Ram Lakhan Soni, Aged About 46 Years, Main Market, Kirandul, District Dantewara, Chhattisgarh.

---- Appellant

Versus

- Commissioner, Customs And Central Excise Central Excise Building Dhamtari Road, Tikrapara, Raipur, Chhattisgarh

---- Respondent

For Appellant : Shri Amrito Das, Advocate.
For Respondent : Shri Manish Sharma, Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board By Justice Pritinker Diwaker

13/06/2016

Vide order-in-original dated 16.3.2012 passed by the Commissioner, Central Excise & Customs, Raipur, the demand of service tax to the tune of Rs.60,30,799/- was confirmed and it was also ordered that the amount be recovered along with interest and penalty as imposed. This order was subjected to challenge before Customs Excise & Service Tax Appellate Tribunal and vide impugned order, the Tribunal has directed the appellant to deposit service tax along with interest, waiving the penalty. It is this order passed by the Tribunal, which has been challenged by the appellant in the present appeal.

02. Counsel for the appellant admits that the appellant was required to deposit the said amount but on account of financial constraint, he could not deposit the same within time. He submits that if the impugned order

is not interfered with, the appellant would suffer an irreparable loss because attachment order is likely to be issued. It has been pointed out that out of Rs.60,30,799/-, a sum of Rs.42,19,825 has been deposited between 16.6.2007 & 2.3.2015 and thereafter, Rs.14,26,967/- has also been deposited on 15.12.2015. He submits that as major portion of service tax has already been deposited, the Tribunal ought to have waived the remaining amount along with interest and penalty.

03. Opposing this submission, it has been argued by counsel for the respondent that the appellant is under an obligation to deposit the entire amount and then only his appeal would be entertained by the Tribunal. He submits that the Tribunal has already exercised the discretionary power by waiving the penalty and therefore, no interference is called for. He further submits that no substantial question of law arises for consideration of this Court.

04. Heard counsel for both the parties and perused the material on record.

05. Considering the facts and circumstances of the case, in particular the fact that the Tribunal has already exercised its jurisdiction while passing the impugned order, no substantial question of law arises for consideration of this Court. The appeal has no substance, the same is liable to be dismissed *in limine* and it is dismissed as such.

Sd/	Sd/
(Pritinker Diwaker)	**(C.B. Bajpai)**
Judge	**Judge**

Khan