IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.2.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

CIVIL MISCELLANEOUS APPEAL NOS.44 AND 162 OF 2016
AND CMP.NOS.340 AND 1358 OF 2016

Yes & Yes Hi-Tech Promoters India
(P) Ltd., Erode-4. ...Appellant in both CMAs

Vs

1.The Commissioner of Central Excise,
Salem-1.

2.The Customs Excise & Service Tax
Appellate Tribunal, South Zonal Bench,
Chennai-6. ...Respondents in both CMAs

APPEALS under Section 35G of the Central Excise Act, 1944 against (i) final order No.40728 of 2015 dated 30.6.2015 in ST/40898/2014 (CMA.No.44 of 2016) and (ii) misc.order No.42387 of 2014 dated 12.12.2014 in ST/S/ 41144/2014 in ST/ 40898/2014 (CMA.No.162 of 2016), both on the file of the second respondent.

For Appellant: Mr.Hari Radhakrishnan

For Respondent-1 : Mr.V.Sundareswaran, SPC

COMMON JUDGMENT

(JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J)

These appeals arise out of an order directing the appellant/assessee to make a pre-deposit and a consequential order dismissing the appeal for non compliance with the order for making pre-deposit.

2. Heard Mr.Hari Radhakrishnan, learned counsel for the appellant. Mr.V.Sundareswaran, learned Senior Panel Counsel takes notice for the first respondent.

3. By an Order in Original dated 29.1.2014, the Original Authority levied a demand for service tax to the tune of Rs.52,60,667/- together with interest and penalty. As against the said order, the appellant filed an appeal before the second respondent along with a petition for waiver and stay.

4. By an order dated 12.12.2014, the Tribunal directed the appellant to make a pre-deposit of Rs.12 lakhs within six weeks from the date of the order and to report compliance on 30.1.2015. The appellant neither complied with the conditional order nor filed an application for extension of stay nor came up with any appeal. Therefore, the unnumbered appeal was taken up on 30.6.2015 and was dismissed for non compliance with the conditional order.

5. Therefore, the appellant has filed two appeals, one against the order for pre-deposit and another against the consequential order of dismissal of the appeal. The appellant also filed a petition for condonation of delay, which was allowed by this Court.

6. It is contended by Mr.Hari Radhakrishnan, learned counsel for the appellant that the case of the appellant is squarely covered by a final order passed by the Mumbai Bench of the Tribunal in Anand Construction Co. Vs. Commissioner of Central Excise, Kolhapur [(2013) 32 STR 451]. According to the learned counsel, the very same Tribunal has granted total waiver in favour of other persons, but discriminated against the appellant. Therefore, the learned counsel further contended that the impugned orders are liable to be set aside, when the appellant has a good case on merits in view of another decision of the Mumbai Bench of the Tribunal.

7. We have carefully considered the above submissions.

8. At the outset, the original order directing the appellant to make a pre-deposit was passed on 12.12.2014. The time for compliance was fixed as six weeks. The appellant ought to have either complied with the conditional order or filed an application for extension of time or at least filed an appeal against the said order. Neither within the time stipulated by the Tribunal nor after the time fixed, the appellant filed any appeal. As a consequence, the order dismissing the appeal came to be passed long after on 30.6.2015.

9. Once a consequential order is passed, the appellant would have no cause of action as against the original order. Consequently, the order cannot be challenged in the absence of compliance with the original order. Hence, the appeals cannot be entertained.V.RAMASUBRAMANIAN,J

10. Accordingly, the civil miscellaneous appeals are dismissed. No costs. Consequently, the above CMPs are also dismissed.

11. It is open to the appellant to go back to the Tribunal seeking whatever relief they are entitled to in law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Central Excise,
No.1 Foulks Compound, Anai Medu,
Salem-1.

2.The Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench,
Hoddows Road, Shasthi Bhawan,
Chennai-6.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.7396
+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.7651

CMA.Nos.44 & 162 of 2016 and
CMP.Nos.340 & 1358 of 2016

msm(CO)
srg(19/02/2016)