IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3/6/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Civil Miscellaneous Appeal Nos.488 to 495 of 2016

M/s.Neycer India Limited
Tiles Division
Pillayarkuppam
Pondicherry 605 005. ... Appellant in all the Appeals.

Vs

The Commissioner of Central Excise
office of the Commissioner of Central Excise
No.1 Goubert Avenue
Beach Road
Pondicherry 605 001. ... Respondent in all the Appeals

Prayer in C.M.A.Nos.488 to 491 of 2016: APPEALS under Section 35G of Central Excise Act, 1944 against the Final Order Nos.40455 to 40458 of 2014 dated 30/7/2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

Prayer in C.M.A.Nos.492 to 495 of 2016: APPEALS under Section 35G of Central Excise Act, 1944 to set aside the Misc. Order Nos.40578 to 40581 of 2014 dated 28/3/2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For appellant : MrK.Magesh

For respondent : Mr.A.P.Srinivas
Standing Counsel for Customs.

C O M M O N J U D G M E N T
(Judgment of the Court was made by S.Manikumar,J.)

M/s.Neycer India Limited, Tiles Division, Pillayarkuppam, Pondicherry 605 005 has filed four appeals, viz., E/40221 to 40224 of 2014 and four Stay Application Nos.E/Stay/40363 to

40366/2014 before the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

2. Against the orders passed by the Commissioner of Central Excise (Appeals), Chennai, in Appeal Nos.183 to 186 of 2013 (P) dated 21/11/2013, the appellant has sought for waiver of pre-deposit and stay of the operation of the orders passed in Appeal Nos.183 to 186 of 2013. While disposing of the stay applications, CESTAT, Madras, has directed the appellant to deposit a sum of 3 lakhs (Rupees Three lakhs only), within a period of six weeks. For non compliance of the conditional order of stay, CESTAT, Madras, vide Final Order Nos.40455 to 40458/2014, dated 28/3/2014, has dismissed all the appeals.

3. Being aggrieved by the Final Orders passed in 40455 to 40458 of 2014, C.M.A.Nos.488 to 491 have been filed. Against the orders passed in the stay petitions in Misc Order Nos.40578 to 40581 of 2014, C.M.A.Nos.492 to 495 of 2016 have been filed.

4. Assailing the correctness of the above said orders, Mr.K.Mahesh, learned counsel for the appellant contended that the Tribunal, while rejecting the case of the applicant, CESTAT, Madras has not rendered any finding as to the existence or non-existence of undue financial hardship, which is a relevant factor for exercising powers under Section 35-F of the Central Excise Act, 1944.

5. On the above, the appellant has raised the following substantial questions of law:-

> "1. Whether the order of the Tribunal directing a pre-deposit of Rs.3,00,000/- of the disputed taxes stands vitiated in as much as it fails to see that the condition imposed is such which for all intent and purport takes away the appellants vested right of appeal and works as a deterrent or disables and impedes access to a forum viz, CESTAT which is meant for redressal of the grievance of an assessee suffering an adverse order and results in rendering the statutory remedy of appeal illusory?
>
> 2. Whether the order of the Tribunal in as much as it has not even considered nor rendered any finding on the existence or otherwise of 'undue hardship' while exercising its power to dispense with pre-deposit under Section 35 F of the Central Excise Act suffers from non-consideration of relevant aspect/statutory condition stands vitiated?"

6. When the instant appeals were taken up for hearing, learned counsel for the appellant further submitted that only for non-compliance of the order, dated 28/3/2014, final orders have been passed, dismissing the appeals. He submitted that if adequate time is granted for making the pre-deposit of Rs.3 lakhs, as ordered by CESTAT, Madras, appellant would comply with the same.

7. Considering the limited prayer sought for, Mr.A.P.Srinivas, learned Senior Standing Counsel for Customs, was put on notice on behalf of the Commissioner of Central Excise, Pondicherry, the sole respondent in all the appeals.

8. Going through the material on record, Mr.A.P.Srinivas, learned Senior Standing counsel for the respondent submitted that the conditional order, to make pre-deposit of Rs.3 lakhs, within a period of six weeks, has not been complied with and that therefore, there is no material irregularity in the order, dated 30/7/2014.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. A perusal of the order, dated 28/3/2014, shows that when the appellant has sought for waiver of pre-deposit, the Tribunal has directed pre-deposit of Rs.3 lakhs, to be made within a period of six weeks and to report compliance on 23/5/2014 and thereupon such deposit, pre-deposit of the balance dues stands waived and recovery thereof would be stayed, during the pendency of the appeals. Subsequently, for non-compliance of the order, dated 28/3/2014, CESTAT, Madras has passed the following orders, dismissing all the appeals. Order dated 30/7/2014, reads thus:-

> "By Stay Order Nos.40578 - 40581/2014 dated 28/3/2014, the appellants were directed to make pre-deposit of Rs.3,00,000/- lakhs within a period of six weeks. The Ld. Advocate on behalf of the appellants submits that they have neither complied the stay order nor seeking extension of stay. Since the appellants failed to comply with the stay order all the appeals are dismissed for non-compliance of the stay order."

11. Though the Tribunal has dismissed the appeals for non-compliance of the conditional order of pre-deposit of Rs.3 lakhs, within the time frame, CESTAT, Madras has not considered as to whether there was any existence or non-existence of undue financial hardship.

12. Taking note of the financial constraint expressed and the contentious issues raised in the appeals, we deem it fit that the appellant should be given an opportunity, to pursue the appeals before CESTAT, Madras, by extending the time, for compliance, i.e., to make pre-deposit of Rs.3 lakhs and we are also of the view that no serious prejudice would be caused to the respondent by directing extension of time.

13 (1). In the light of the above, Final Orders made in 40455 to 40458/2014 dated 30/7/2014, are set aside.

(2). Three weeks' time is granted from today for making pre-deposit of Rs.3 lakhs, as ordered by the Tribunal in M.P.Nos.40578 to 40581 of 2014, dated 28/3/2014.

(3). On making such deposit, stay petitions filed would stand restored.

14. With the above directions, all the Civil Miscellaneous Appeals are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

mvs.

To

1. The Commissioner of Central Excise
office of the Commissioner of Central Excise
No.1 Goubert Avenue
Beach Road
Pondicherry 605 001.

2. The Customs Excise and Service Tax Appellate Tribunal
Chennai

1 cc to M/s. K. Magesh, Advocate, Sr. 29526
1 cc to Mr.A.P.Srinivas, Advocate, Sr. 29723

C.M.A.Nos.488 to 495 of 2016

PPA (CO)
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