IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.4.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CIVIL MISCELLANEOUS APPEAL NO.769 OF 2016

M/s.M.R.S.Leather Exports
P. Ltd., Chennai-3. ...Appellant

Vs

1.The Commissioner of Service Tax,
Chennai III, Chennai.

2.The Customs, Excise and Service
Tax Appellate Tribunal, South
Zonal Bench, Chennai-6. ...Respondents

APPEAL under Section 35G of the Central Excise Act against the final order No.40158/2015 dated 10.2.2015 passed by the second respondent herein.

For Appellant : Mr.A.S.Sriraman for Mr.S.Sridhar

For Respondent-1 : Mr.A.P.Srinivas

Judgment was delivered by V.RAMASUBRAMANIAN,J

The appeal filed by the assessee arises out of the dismissal of an application filed by the assessee for recalling an ex parte order passed by the Tribunal directing the assessee to make a pre-deposit of the entire amount of duty as a condition for entertaining the appeal and for granting stay.

2. Heard Mr.A.S.Sriraman, learned counsel for the appellant and Mr.A.P.Srinivas, learned Standing Counsel for the Department.

3. It appears that the application for waiver of pre-deposit and stay was disposed of ex parte on 28.8.2014 by the Tribunal, directing the appellant to make a predeposit of the entire amount of duty working out to more than Rs.37 lakhs. The

appellant filed an application on 7.10.2014 for recalling the ex parte order. Though no notice was served on the said application, an auditor seems to have taken time. But, on the ground that the auditor was not given the power of attorney, the Tribunal dismissed the application for setting aside the ex parte order. Hence, the assessee is before us.

4. The learned counsel for the appellant fairly submitted that there was some communication gap and that notices were not properly served.

5. Therefore, taking into account the fact that the assessee was represented by a chartered accountant, but the same was not accepted by the Tribunal, we are of the considered view that some lenience could be shown to the appellant.

6. After the amendment with effect from 6.8.2014, appeals could be entertained upon making a predeposit of 7.5%. But, in this case, the application for stay and waiver of predeposit was filed before 6.8.2014. Therefore, the appellant may not have the benefit of the amendment.

7. In such circumstances, we are of the considered view that by allowing the appeal and directing the appellant to make a predeposit of 25% of the duty demanded, ends of justice would be met.

8. Accordingly, the civil miscellaneous appeal is allowed on condition that the appellant deposits Rs.10,00,000/- (Rupees ten lakhs only) (25% rounded off to Rs.10 lakhs) on or before 23.5.2016. Upon such deposit, the application filed by the appellant shall stand allowed and the main appeal itself shall be numbered and taken up for disposal in course of time. If the appellant fails to comply with the above condition, the application shall stand automatically dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Service Tax,
Chennai III,
Chennai.

2.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Chennai-6.

+1cc to Mr.S.Sridhar, Advocate Sr.24619
+1cc to Mr.A.P.Srinivas, Advocate sr.24850

CMA.No.769 of 2016

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srg 30/05/2016