HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Central Excise Appeal No.77 of 2016

Judgment: (per V.Ramasubramanian, J.)

For belated filing of ST-3 returns and the belated payment of service tax and interest, the respondent was also imposed a penalty. The Tribunal set aside the penalty on the ground that there was a reasonable cause. As against the said order, the Revenue has come up with the present appeal under Section 35G of the Central Excise Act, 1944.

2. Section 80(1) of the Act reads as follows:

> "**80. Penalty not to be imposed in certain cases**.
>
> (1) Notwithstanding anything contained in the provisions of section 76, or section 77, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure."

3. From the above statutory provision, it is clear that what is required of the assessee is to prove that there was reasonable cause for the failure. Once the Tribunal is convinced that there was reasonable cause for the failure, no question of law would arise out of the same. The existence of reasonable cause or otherwise is purely a question of fact. It borders on discretion. Whether financial hardship would tantamount to reasonable cause or not, may border on a question of law. But once the discretion is exercised,

no substantial question of law arises for the admission of the appeal. Hence, the appeal is dismissed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

05th December, 2016.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Central Excise Appeal No.77 of 2016
(per VRS, J.)

05th December, 2016.
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