THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

C.E.A.NO.111 OF 2015

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri A.V.A.Siva Kartikeya, learned counsel for the petitioner, and Sri Gopala Krishna Gokhale, learned Standing Counsel for Central Excise and with their consent, the appeal is disposed of at the stage of admission. The order, under challenge in this appeal, was passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in ST/522/2012-DB dated 17.02.2014 rejecting the petitioner's application for waiver of deposit of the penalty imposed on them under Section 76 of the Finance Act.

In the order under appeal, the CESTAT noted that it had earlier passed an order, in Miscellaneous Order No.20002/2014 dated 10.01.2014, directing the appellant to deposit the penalty imposed under Section 76 of the Finance Act as assessed in the adjudication order, and to report compliance on 17.02.2014; when the matter was called on 17.02.2014, neither was the appellant present nor was there any representation on their behalf; there was no compliance with the requirement of pre-deposit as ordered by the Tribunal; and the appeal was dismissed for non-compliance of the stay order in accordance with the provisions of Section 35F of Central Excise Act, 1944.

Before us, Sri A.V.A.Siva Kartikeya, learned counsel for the petitioner, would submit that the Tribunal failed to notice that the petitioner had filed an application seeking adjournment; they had also filed an application seeking modification of the earlier order as they had paid the entire tax due; and, in any case, while the application for waiver of pre-deposit could have been rejected, the Tribunal erred in dismissing the appeal itself. On the other hand Sri Gopala Krishna Gokhale, learned Standing Counsel for Central Excise, would submit that the petitioner is due a sum in excess of Rs.35,00,000/- towards service tax; and their claim, of having paid the service tax in its entirety, is not correct.

It is wholly unnecessary for us to dwell on this aspect as it is not in dispute that on 17.02.2014, when the stay application came up before the CESTAT, neither was the appellant present nor was their counsel, who appeared before the CESTAT on their behalf, present. Having failed to appear before the Tribunal, the appellant cannot now be heard to contend that filing an application for modification justified their absence on the date of hearing i.e., on 17.02.2014. While the CESTAT was justified in dismissed the stay application for failure of the appellant to comply with the miscellaneous order dated 10.01.2014, the appellant's failure to deposit the penalty amount could not have resulted in dismissing the appeal itself. To the limited extent that the appeal itself was dismissed, the impugned order is set aside.

As the appellant claims to have paid the entire disputed tax even earlier which, if true, would mean that they are now being called upon to pay tax twice, the CESTAT is requested to hear and decide the appeal with utmost expedition. We, however, see no reason to interfere with the order under appeal to the extent the application, for waiver of pre-deposit, was dismissed. Suffice it to make it clear that deposit of the penalty amount by the petitioner, consequent upon dismissal of their application seeking waiver of pre-deposit, shall be subject to the result of the main appeal.

Subject to the above observations, the appeal is, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

25th January 2016
RRB