THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No.5134 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri M.Srikanth, learned counsel for the petitioner, and Sri Jalakam Sathyaram, learned Standing Counsel for Central Excise, and, with their consent, the writ petition is disposed of at the stage of admission. The order, under challenge in this writ petition, was passed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Hyderabad in Appeal No.ST/stay/27969/2013 dated 18.12.2015.

The petitioner, a society registered under the Societies Registration Act by the Government of India, preferred an appeal to the CESTAT, Bangalore against the order of adjudication dated 30.04.2013 confirming the service tax demand of Rs.1,19,79,269/- along with interest and penalty. They filed an application seeking waiver of pre-deposit. In the order impugned in this writ petition, the Tribunal observed that adjournment of hearing of the stay application was filed by the appellant on several previous occasions for one reason or the other; on 29.01.2015, hearing was adjourned to 23.02.2015; when the stay application was taken up, after issuing notice to the appellant, the appellant's counsel sought adjournment on the ground that he wished to engage a senior counsel to argue the stay application; and the appellant seemed to be consistently avoiding hearing of the stay application ,and was seeking adjournment of the same. While adjourning the stay application to 21.04.2016, the CESTAT clarified that the Revenue shall be at liberty to realize the assessed liability, notwithstanding pendency of the stay application.

Sri M.Srikanth, learned counsel for the petitioner, would take us through various notices issued by the CESTAT to contend that the hearing was adjourned by the CESTAT itself on all occasions except on 13.05.2015; the petitioner herein had already engaged a senior counsel at Banglore, who had appeared before the CESTAT in the hearing held on 30.12.2014; the request made by the counsel at Hyderabad was for an adjournment, as the senior counsel from Banglore was unable to come for the hearing; the appeal was originally filed before the CESTAT, Banglore, and was transferred from there to CESTAT, Hyderabad; and, in such circumstances, another opportunity should be granted to the petitioner to put forth their submission in the application filed by them seeking waiver of pre-deposit. Sri Jalakam Sathyaram, learned Standing Counsel for Central Excise, would submit that only a single member is presiding over the Tribunal; and Division Bench has not been constituted to hear the matters, such as the present stay application.

It does appear from the several proceedings of CESTAT, as filed before this Court, that most of the adjournments were at the instance of the CESAT itself; and, except for the hearing held on 13.05.2015, the petitioner did not, at any point prior to the date on which the impugned order was passed, seek adjournment.

We consider it appropriate, in such circumstances, to set aside the order dated 18.12.2015. The CESTAT, Hyderabad is requested to hear the petitioner's application for waiver of pre-deposit at the earliest. It is made clear that, if the petitioner does not appear and put forth their arguments on the next date of hearing of the stay petition fixed by the Tribunal, it is open to the Tribunal to decide the application, for waiver of pre-deposit, on its merits without granting any further adjournment to the petitioner.

The writ petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:23.02.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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