THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CENTRAL EXCISE APPEAL NO.33 OF 2016

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

This appeal under Section 35G of the Central Excise Act ("the Act" for brevity) is preferred against the order passed by the CESTAT, Hyderabad in Stay Application No.1782 of 2011 in ST.No.2880 of 2011 dated 18.12.2015. The application was filed by the petitioner before the CESTAT under the proviso to Section 35F of the Act seeking waiver of the pre-deposit in its entirety pending disposal of the appeal preferred against the order of the Commissioner, Central Excise, i.e., order in Original No.41 of 2011 dated 29.11.2011.

In the order under appeal, the Tribunal noted that the application for waiver of pre-deposit was heard by the Tribunal and was allowed to the extent of penalty, on condition of pre-deposit of Rs.1,21,35,134/- along with proportionate interest within four weeks; the adjudicating authority had confirmed the demand of Rs.1,21,35,134/- as the tax due, and had appropriated Rs.15,00,000/- remitted between October and December 2009. While examining the plea of financial hardship, the CESTAT noted that, from the tax returns, the appellant appeared to be in possession of properties and deposits in banks, besides the mutual funds which earn dividends; and no evidence of inability to raise funds for pre-deposit had been placed before them. The order of pre-deposit was confirmed, the application for stay was disposed of, and compliance was directed to be reported within five weeks failing which the appeal would stand dismissed.

Sri S. Ravi, learned Senior Counsel appearing on behalf of the appellant, had earlier submitted that, as against the tax and interest payable in terms of the adjudication order of Rs.1,36,35,134/-, the appellant had already paid Rs.61,12,530/-; the balance payable was a little more than Rs.75,00,000/-; the profit and loss account would show that the adjudicating authority had erroneously included the material purchased, on which VAT had already been paid, as the turnover on which service tax was payable; if the material component was excluded, then the service tax liability would only be Rs.77,43,428/-; and, after deducting the tax already paid of Rs.61,12,530/-, the balance payable would only be Rs.16,30,898/-. Learned Senior Counsel had also submitted that the appellant had Rs.22,49,182/- as Fixed Deposits, and Rs.28,61,583/- as mutual funds, totalling to Rs.51,10,765/-.

This Court, by order dated 29.04.2016, directed the respondents not to take coercive steps in terms of the adjudication order on condition that (1) the appellant deposited Rs.16,31,000/- with the respondent with four weeks; and (2) for the balance amount due, which was in excess of Rs.59,00,000/-, she should furnish security by deposit of fixed deposit receipts/lien on mutual funds account.

Today Sri S.Ravi, learned Senior Counsel, would submit that, in compliance with the interim order passed by this Court, the appellant has deposited Rs.16,31,000/- and furnished fixed deposit receipts totalling to Rs.59,09,128/-; and, as a result, the appellant had partly paid and partly secured the entire service tax liability.

Sri Gopala Krishna Gokhaley, learned Standing Counsel for Central Excise, would fairly submit that the interim order passed by this Court on 29.04.2016 has been complied with.

As the petitioner has partly paid and partly secured the entire service tax demanded by the adjudicating authority, we consider it appropriate to set aside the order under appeal and direct the CESTAT to decide the appeal on its merits at the earliest. It is made clear that the security furnished by the petitioner shall be retained by the adjudicating authority, and shall abide by the result of the appeal before the CESTAT.

The appeal is, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

17th June 2016
RRB