THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

CENTRAL EXCISE APPEAL No. 31 of 2016

JUDGMENT: ***(Per VRS,J)***

The assessee has come up with the above appeal under Section 35G of the Central Excise Act, 1944, challenging the order of CESTAT, refusing to condone the delay of about 315 days in filing the appeal against an order of the appellate Commissioner.

2. Heard Mr. S. Ravi, learned senior counsel appearing for the appellant, and Mr. B. Narasimha Sarma, learned senior standing counsel for Income Tax Department, appearing for the respondent.

3. Pursuant to a show-cause-notice, dated 15.11.2010, issued against the appellant, an order in original came to be passed on 24.06.2011 by the adjudicating authority, imposing a demand of central excise duty to the tune of Rs.32,29,153/-, together with interest at the applicable rates, and a penalty of an equivalent amount.

A personal penalty of Rs.5,000/- was also imposed upon the Managing Director of the assessee Company.

4. As against the order in original, the appellant filed a statutory appeal before the Commissioner (Appeals) along with applications for stay and waiver of pre-deposit. These applications were disposed of, by an order, dated 16.09.2011, directing the appellant to make a pre-deposit of 50% of the amount confirmed in the order in original, on or before 22.10.2011. The appellant did not comply with the pre-deposit condition, either before the original time granted or the extended time. This resulted in the appeal being dismissed by the appellate Commissioner.

5. As against the order of the appellate Commissioner, the appellant filed a further appeal before the CESTAT, along with an application for condonation of the delay of 10 months and 15 days. The said application was dismissed by the Tribunal, by a final order, dated 21.07.2015, forcing the appellant to come up with the above appeal.

6. *Stricto sensu*, no substantial question of law would arise in cases of this nature. But, the statutory right of appeal cannot become redundant, by the dismissal of an

application for condonation of delay, on technical grounds. All that one has to see is whether the interest of the Revenue will stand protected, even while recognizing the right of the assessee to exercise the statutory remedies available to them.

7. The appellate Commissioner, in his order, dated 16.09.2011, has recognized the fact that there was hardship for the assessee. It is this hardship that probably made the assessee not to comply with the demand, but to file a further appeal after huge delay.

8. But, today the appellant is prepared to comply with the

pre-deposit condition imposed by the appellate Commissioner. Therefore, we are of the considered view that by granting one opportunity to the appellant to comply with the pre-deposit condition imposed by the Commissioner, the interest of both the parties would be balanced. While this will ensure some revenue to the respondent, it would restore the right of appeal to the appellant/assessee.

9. Therefore, the appeal is allowed, the order of the CESTAT is set aside, and the appellant is granted time till 15.10.2016, to make a deposit of 50% of the duty of

excise of Rs.32,29,153/-, together with 50% of the interest upon the said amount, at the applicable rates, from the date of the order in original up to the date of making the deposit before the Commissioner (Appeals). If the appellant complies with this condition, the appeal on the file of the Commissioner (Appeals) shall stand restored and the appeal shall be disposed of on merits.
If the appellant fails to comply with this condition, the appeal would be treated as having been dismissed, confirming the order of the Tribunal.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

18th August, 2016
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