

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION No. 22320 of 2016

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ORDER: (*Per VRS,J*)

The petitioner, which is a Government of India Enterprise, has come up with the above writ petition seeking to *set aside* a set of communications issued by the Superintendent of Service Tax making a demand on the petitioner, and also for a direction to the 3rd respondent - CESTAT to dispose of their restoration applications.

2. Heard Mr. S. Ravi, learned senior counsel, representing

Mr. Ch. Pushyam Kiran, learned counsel for the petitioner, and

Mr. B. Apparao, learned standing counsel for the respondents 1 and 2.

3. In view of the limited nature of the prayer made, we directed the learned standing counsel for the respondents 1 and 2 to take notice, even at the admission stage.

4. By virtue of the decision of the Supreme Court in ***Oil and Natural Gas Commission Vs. Collector of Central Excise***^[1], it became an inevitable necessity for the Public Sector Undertakings to take the approval of the Committee on Disputes before they file appeals under the Customs Act, Central Excise Act and Income Tax Act. The Tribunals dismissed all the appeals of Public Sector Undertakings, if they had not taken such approval. The decision in ***ONGC (1 supra)*** was recalled by the Supreme Court on 17.02.2011 in ***Electronics Corporation of India Limited Vs. Union of India***^[2].

5. Therefore, the petitioner, whose appeals met with such a fate on the basis of the decision in ***ONGC (1 supra)***, filed applications for restoration. The restoration applications are pending for the past five years before the CESTAT, resulting in the 1st respondent issuing demand notices. Therefore, the petitioner has come up with the above writ petition seeking a limited direction to the CESTAT to dispose of their restoration applications.

6. As a matter of fact, the learned standing counsel is right in contending that the Supreme Court could not have taken away the statutory right of appeal by a judicial

order. But, fortunately, the problem so created has now been corrected by the decision in ***ECIL (2 supra)***.

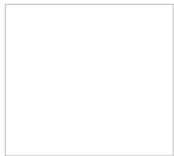
7. Therefore, the 1st respondent cannot actually make a demand, when the restoration applications of such Public Sector Undertakings are pending before the CESTAT. Hence, the Writ Petition is disposed of, directing the CESTAT to dispose of the restoration application Nos.ST/ROA/47/2011, ST/ROA/48/2011 and ST/ROA/6/2012 filed by the petitioner, within a period of three (3) months from the date of receipt of a copy of this order. Until then, the demands issued by the 1st respondent shall not be enforced.

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

V. RAMASUBRAMANIAN, J

ANIS, J.

19th July, 2016
cbs



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AND

THE HON'BLE SMT JUSTICE ANIS

Writ Petition No.22320 of 2016
(Per VRS,J)

19th July, 2016

cbs

[\[1\]](#) 1992 (61) ELT 3 (SC)

[\[2\]](#) 2011 (265) ELT 11 (SC) (Larger Bench)