

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

-
HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE A.V. SESA SAI

-
WRIT PETITION No. 8957 OF 2016

Date: 20.07.2016

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Between:

M/s. Bhavya Cements Ltd.,
Rep., by its Managing Director,
Guntur District.

... Petitioner

And

Union of India, rep., by its Secretary (Revenue),
New Delhi & another.

... Respondents

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE A.V. SESA SAI**

WRIT PETITION No. 8957 OF 2016

PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

The order, dated 14.01.2016, passed by the Commissioner of Central Excise and Service Tax, Guntur, is challenged directly before this Court by way of the instant writ petition under Article 226 of the Constitution of India, solely on the ground that the third reply, dated 21.12.2015 (Annexure P8), sent by the petitioner along with several documents was not considered by the Commissioner at all while passing the said order. Admittedly, the order, dated 14.01.2016, is appealable under Section 35(B) of the Central Excise Act, 1944.

We have perused the impugned order as well as other materials placed before us, including the third reply dated 21.12.2015. The petitioner has not placed an acknowledgement of having sent the third reply to the Commissioner. In other words, there is nothing on record to show that the third reply was, in fact, tendered to and received by the Commissioner. When we so expressed, learned counsel for the petitioner submits that the petitioner's advocate lost acknowledgement in shifting of his office. That apart, we did not find any such permission sought by the petitioner on 10.12.2015, the date on which the Commissioner heard the matter personally and closed for orders.

After arguing this petition for sometime, learned counsel for the petitioner seeks permission to withdraw the writ petition with liberty to the petitioner to take a remedy of appeal. Learned Assistant Solicitor General has no objection for allowing the petitioner to take the remedy of appeal.

Hence, we dispose of the writ petition as withdrawn with liberty as prayed. All contentions on merits are kept open.

Miscellaneous petitions, if any, shall also stand disposed of.

DILIP B. BHOSALE, ACJ

A.V. SESA SAI, J

Date: 20.07.2016
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