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

CENTRAL EXCISE APPEAL No.1 of 2016

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

This appeal, under Section 35 (g) of the Central Excise Act, 1944 (for brevity, 'the Act'), is preferred against the order passed by the Central Excise, Customs and Service Tax Appellate Tribunal (for brevity, 'CESTAT') in stay order No.20991/2015 dated 16.06.2015.

Against the order passed by the Commissioner, Central Excise, the appellant carried the matter in appeal to the CESTAT, Bangalore. They filed an application for waiver of pre-deposit, pending disposal of the appeal. In the order under appeal, the Tribunal noted that, on the matter being called, neither had anybody appeared nor was there any request for adjournment; and the matter had come up earlier, and had been repeatedly adjourned. The CESTAT recorded, its *prima facie* view, that CENVAT credit would not be available to the appellants. It also noted that the appellants had not pleaded any financial difficulties and, accordingly, directed them to deposit, the entire denied CENVAT credit amount, within a period of 8 weeks from the date of the order, and to report compliance on 25.08.2015.

Sri E.V.V.S.Ravi Kumar, learned counsel for the appellant, would contend that the view taken by the CESTAT is contrary to the view taken by the Chattisgarh High Court in **Union of India v. HEG Ltd (Sponge Iron Division) Borai Industrial**[1]**.** As the main appeal is still pending adjudication before the CESTAT, it would be wholly inappropriate for us to examine the matter on merits, or decide whether or not the judgment of the Chattisgarh High Court, as relied upon, would apply to the facts of the present case.

Suffice it to note that the twin requirements for waiver of pre-deposit, under the proviso to Section 35(f) of the Act, is if deposit, of the duty demanded, would cause undue hardship to the person and, at the same time, for the interest of the Revenue to be safeguarded. Bearing these twin factors in mind, the CESTAT is required to consider whether deposit of duty should be waived subject to such conditions as it may deem fit to impose.

As noted by the CESTAT, in the order under appeal, the appellant has not even pleaded financial hardship. The CESTAT also noted that, despite several adjournments, there was no representation on behalf of the appellant. Even before us,
Sri E.V.V.S.Ravi Kumar, learned counsel for the appellant, is in no position to explain why their counsel before the CESTAT chose not to appear despite several adjournments, and whether the appellant had taken action, against their counsel, for his repeated absence before the CESTAT.

Having chosen not even to appear through counsel before the CESTAT, the appellant cannot now be heard to contend that, despite their absence, the CESTAT should have, on its own accord, considered their application, and granted complete waiver of pre-deposit. We are satisfied that the order under appeal does not suffer from any legal infirmity, much less a substantial question of law, necessitating interference in appeal under Section 35 (g) of the Act.

The appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

06th January, 2016.
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[1] (2012) 275 ELT 316