IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 3 of 2016 (O&M)

Date of Decision: 16.3.2016

M/s Chandan Electricals, Ajouli, Ropar

....Appellant.

Versus

Union of India and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Avneesh Jhingan, Advocate for the appellant.

Mr. Sunish Bindlish, Advocate for respondent No.2.

AJAY KUMAR MITTAL, J.

1. Written statement on behalf of respondent No.2 filed in Court today is taken on record subject to all just exceptions.

2. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short “the Act”) read with Section 83 of the Finance Act, 1994 (for brevity “the 1994 Act”) against the order dated 29.9.2015 (Annexure A-5) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”) directing the assessee to pre-deposit tax along with interest.

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The Superintendent, Central Excise, vide letter dated 3.10.2008 asked M/s Municipal Council, Nangal, District Ropar to supply the information regarding amount paid to the service providers qua the service provided. M/s Municipal Council, Nangal vide letter dated 5.6.2009 and subsequently work order-wise clarification made vide letter dated 23.7.2009 informed that an amount of ₹ 27,01,236/- had been paid to the appellant during the period from 2005-06 (16.5.2005) to 2008-09 on account of cost of service provided in relation to the management, maintenance and repair service. Accordingly, a show cause notice was issued to the appellant. Respondent No.1 vide order dated 20.6.2012 (Annexure A-1) levied tax amounting to ₹ 3,25,561/- plus interest under Section 75 of the 1994 Act. Further, a penalty of an equal amount was also imposed under Section 78 of the 1994 Act. Feeling aggrieved, the appellant filed an appeal before the Commissioner, Central Excise (Appeals) who vide order dated 20.5.2013 (Annexure A-2) partly allowed the appeal holding that the payment received was inclusive of service tax and, therefore, the service tax element be reduced. The penalty under Section 78 of the 1994 Act was also to be recalculated accordingly. In pursuance thereto, a corrigendum dated 9.7.2013 (Annexure A-3) was issued reducing the tax demand to ₹ 2,90,500/- and the penalty was also reduced to ₹ 2,90,500/-. Still dissatisfied, the appellant filed an appeal along with stay application on 5.8.2013 (Annexure A-4) before the Tribunal. The Tribunal vide order dated 29.9.2015 (Annexure A-5) while disposing of the stay application directed the appellant to deposit the entire tax along with proportionate interest as pre-deposit. Hence, the present appeal.

4. Learned counsel for the appellant submitted that the requirement of impugned service tax liability along with proportionate interest as pre-deposit as directed by the Tribunal was unfair and excessive. He, however, submitted that the appellant has deposited a sum of ₹ 2,90,500/- in terms of order dated 8.2.2016 passed by this Court.

5. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the Tribunal has rightly directed the appellant to deposit the entire amount of service tax along with proportionate interest.

6. The primary dispute that arises for consideration in this appeal relates to the quantum of pre-deposit to be made by the appellant as a condition precedent for the hearing of the appeal by the Tribunal.

7. On 8.2.2016, this Court had observed that the learned counsel for the appellant had stated that in order to show its bonafide the appellant shall deposit ₹ 2,90,500/- with the respondent on account of service tax demand for the period 2005-06 to 2008-09. When the matter was taken up on 11.2.2016, learned counsel for the appellant had produced e-Receipt for ₹ 2,90,500/- to confirm deposit of the aforesaid amount with the respondent. Accordingly, while issuing notice of motion for 9.3.2016, it was directed that the Tribunal shall not dismiss the appeal of the assessee for want of pre-deposit in terms of order dated 29.9.2015.

8. After hearing learned counsel for the parties and keeping in view the totality of the facts and circumstances of the case coupled with the fact that the appellant has already deposited a sum of ₹ 2,90,500/-, in terms of order dated 8.2.2016, the instant appeal is disposed of by

making the interim order dated 11.2.2016 absolute. The Tribunal is directed to hear the appeal on merits in accordance with law without insisting for any further deposit.

(AJAY KUMAR MITTAL)
JUDGE

March 16, 2016
gbs

(RAJ RAHUL GARG)
JUDGE