**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

3 CENTRAL EXCISE APPEAL NO. 1 OF 2017

CHATE EDUCARE PVT. LTD.
VERSUS
COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, AURANGABAD
...
Advocate for Appellant : Mr. Chate Vitthal M.
Advocate for Respondent : Mr. D. S. Ladda

CORAM : S. V. GANGAPURWALA & K. L. WADANE, JJ.

DATE : 30th January, 2017

ORDER:

1. The appellant is aggrieved by the order dismissing the appeal for nonpayment of interest amount.

2. Learned counsel for the appellant submits that under the order dated 16.02.2010, the Tribunal granted stay on condition of pre-deposit of Rs.10 lakhs within six weeks. The appellant deposited Rs.10 lakhs on 15.03.2010 i.e. within stipulated period. The appeal came to be dismissed on the ground that interest amount is not deposited.

3. Learned counsel submits that the appeal was heard. The Tribunal could have disposed of the appeal on merits itself. The financial position of the appellant is weak and the appellant was not in position

to deposit the said amount. There was no impediment for the Tribunal to decide the said appeal on its own merit.

4. Mr.Ladda, the learned counsel for the respondent submits that subsequently the Tribunal had directed the appellant to deposit the tax amount alongwith interest. Pursuant thereto the appellant filed an application on 01.03.2015 seeking four months time to deposit the entire tax amount alongwith interest and also in the said application has averred about the order being passed by the Tribunal of non compliance of the said amount. The impugned order is rightly passed.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. No doubt, the Tribunal had granted stay to the recovery of the penalty and the balance amount along-with interest, subject to payment of Rs.10 lakhs under order dated 16.02.2010. Subsequently, the appellant itself had filed an application on or about 1st/4th of March, 2015 praying for four months time to deposit the amount of tax alongwith interest. Ground No.4 of the said application reads as under:

> "4. Hon'ble Tribunal directed the applicants to pay the amount of tax along with interest before the final order is passed in the matter. The Hon'ble Tribunal posed the matter for compliance on 05.03.2015."

7. It appears that, the appellant has deposited the tax amount, however, the interest amount is not deposited though the appellant has agreed to deposit the same within four months from the date of application. The appellant has also averred the ground about financial constraints.

8. It would not be appropriate to non-suit the appellant by default. Considering the ground of financial stringencies put forth by the appellant, we are inclined to grant one more opportunity to the appellant to deposit entire interest amount within a period of eight weeks.

9. Considering the above, we pass following order:

i. Impugned orders dated 28.09.2015 and 25.04.2016 are quashed and set aside on condition that the appellant deposits the entire amount of interest within a period of eight weeks from the date of this order. Condition of deposit of interest amount is a condition precedent.

ii. On the appellant depositing entire interest amount within eight weeks from the date of this order, the Tribunal shall hear the appeal filed by the appellant on its own merits and decide the same.

10. The Appeal is accordingly partly allowed. No costs.

(K. L. WADANE, J.) **(S. V. GANGAPURWALA, J.)**

JPC