IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.182 OF 2017

Guru Security Force Pvt. Ltd. .. Appellant
Vs
The Commissioner of Service Tax,
Mumbai-III. .. Respondents
–
Shri A.S.Rao i/b Shri K.P.Tiwari for the Appellant.
Shri Swapnil Bangur along with Shri Sham Walve for the Respondents.
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CORAM : A.S. OKA & RIYAZ I. CHAGLA, JJ

DATED : 22ND AUGUST 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. This Appeal is taken up for final disposal at the admission stage. Brief reference to the factual controversy will be necessary. An order dated 31st October 2013 was passed by the Commissioner of Service Tax, Mumbai-II, by which a penalty in the sum of Rs.7,03,15,615/- was imposed on the Appellant. An Appeal against the said order was preferred by the present Appellant before the Custom Excise & Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (for short “the Appellate Tribunal”). On an Application made by the Appellant for waiver of pre-deposit of service tax liability, by an order dated 19th January 2015, the Appellate Tribunal directed the Appellant to deposit an amount of Rs.4 Crores within a period of twelve weeks

from the said date. It was directed that subject to deposit of the said amount, the Application for waiver of pre-deposit of the balance amount will stand allowed and recovery will stand stayed till the disposal of the Appeal. As the Appellant did not comply with the said order of this Court within a period of twelve weeks from the said date, by an order dated 29th June 2015, the Appellate Tribunal dismissed the Appeal. An Application for modification of the order dated 19th January 2015 was made by the Appellant which was dismissed as infructuous as the Appeal preferred by the Appellant was dismissed by that time.

2. Today, the learned counsel appearing for the Appellant has filed an affidavit of one Shri Kiran Vijaykumar Kawale, the authorized representative of the Appellant. A true copy of the Resolution of the Board of Directors of the Appellant passed on 21st August 2017 has been annexed to the affidavit by which the Board of Directors of the Appellant has authorized Shri Kiran V. Kawale to file an undertaking in the present Appeal on behalf of the Appellant. Paragraph 2 of the said affidavit tendered today by Shri Kawale reads thus:-

> "2. I say that pursuant to the hearing of the appeal before this Hon'ble Court on 14.8.2017, I on behalf of the Appellant do hereby undertake before this Hon'ble Court that the Appellant herein shall deposit the amount of Rs.4 crores as directed by the Tribunal vide its order dt. 19.1.2015 in application

> No.ST/S/99361/13 in appeal No.ST/89486 OF 2013-MUM within a period of 12 weeks from the date of the order passed by this Hon'ble Court in the Central Excise Appeal No.182/2017 preferred by the Appellant."

3. The learned counsel appearing for the Appellant on instructions states that the undertaking incorporated in Paragraph 2 is an undertaking of the Appellant which is an unconditional undertaking which will be abided by irrespective of what is stated in Paragraph 5 of the affidavit tendered today. We accept the said statement made on instructions.

4. It is true that the Appellate Tribunal had granted time of twelve weeks to the Appellant to deposit the amount of Rs.4 Crores. In Paragraph 3 of the affidavit tendered today, it is stated that there was a dacoity in the house of the Director of the Appellant Company. The said Director was severely injured. As he was not in a position to look after the day to day business, the Appellant Company landed in financial difficulty. As an undertaking has been given by the Appellant to deposit the amount of Rs.4 Crores within a period of twelve weeks from the said date, in our view, by way of and last chance, an opportunity deserves to be granted to the Appellant to prosecute its Appeal before the Appellate Tribunal. Accordingly, we dispose of the Appeal by passing the following order:-

ORDER:

(a) The undertaking in Paragraph 2 of the affidavit of Shri Kiran V. Kawale, the authorized representative of the Appellant Company which is taken on record and marked "X" for identification is accepted as the undertaking of the Appellant Company;

(b) If the Appellant deposits the amount of Rs.4 Crores as directed by the order dated 19th January 2015 within a period of twelve weeks from today, the order dated 29th June 2015 dismissing the Appeal preferred by the Appellant therein being Appeal Stamp No.ST/89486/13 shall stand set aside. In such event, the order dated 19th January 2015 will stand restored and the interim relief granted thereunder will continue to operate till the disposal of the Appeal;

(c) We make it clear that on the failure of the Appellant to deposit the sum of Rs.4 Crores within a period of twelve weeks in terms of the undertaking, the order of dismissal of the Appeal passed on 29th June 2015 will stand;

(d) We make it clear that we have not made any adjudication on merits of the controversy involved in the Appeal preferred by the Appellant before the Appellate Tribunal;

(e) The Appeal is, accordingly, disposed of on above terms with no orders as to costs.

(RIYAZ I. CHAGLA, J) (A.S. OKA, J)