In the High Court of Judicature at Madras

Dated: 28.06.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
and
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

C.M.A. No.1567 of 2014

Titan Industries Limited
(Watch Division)
No.3, Sipcot Industrial Complex
Hosur - 635 126 ... Petitioner

-vs-

1. Commissioner of Service Tax
Large Tax Payer Unit
1775, Jawaharlal Nehru Inner Ring Road
Anna Nagar West Extension,
Chennai - 600 101

2. Customs, Excise & Service Tax Appellate Tribunal
Shastri Bhavan, Annexe Building,
26, Haddows Road, 1st Floor,
Chennai - 600 006 ... Respondents

Prayer: Appeal filed under Section 35G of the Central Excise Act, 1944 against the order dated 17.03.2014, passed in Miscellaneous Order No.40620 of 2014 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For petitioner : Mr. P.R.Renganath

For Respondents : Mr.A.P.Srinivas

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.,)

1. This is an appeal directed against the order dated 17.03.2014, passed by the Customs, Excise and Service Tax Appellate Tribunal (in short, 'the Tribunal').

2. By this order, the Tribunal directed the Appellant/Assessee to deposit a sum of Rs.8.00 crores, towards duty, interest and penalty, as a condition of stay, pending adjudication of the appeal filled before the Tribunal.

3. This Court admitted the appeal on 18.06.2014 and framed four (4) questions of law. On the very same date, this Court, also granted interim stay against the impugned order of the Tribunal, albeit, upon deposit of a sum of Rs.2 crores. For this purpose, a period of two (2) weeks, from the date of receipt of a copy of aforementioned order, was given to the Appellant/Assessee.

4. The Appellant/Assessee, it appears, had filed a memo of compliance, dated 02.07.2014, to demonstrate that it had deposited a sum of Rs.2 crores on 26.06.2014.

5. Mr.A.P.Srinivas, who appears for the Respondent/Revenue, does not dispute the fact that a sum of Rs.2 crores has been deposited, as claimed by the Assessee, pursuant to the order of this Court dated 18.06.2014.

5.1. Furthermore, Mr.Srinivas, fairly states that the present case relates to a period, prior to the amendment made in Section 35 (F)(iii) of the Central Excise Act, 1944 (in short, 'the 1944 Act'), which requires an appellant to make pre-deposit equivalent to 7.5% of the duty demanded or penalty imposed or both via the impugned demand.

6. We are informed by Mr.Srinivas that the total demand raised qua the Appellant/Assessee towards tax alone is a sum of Rs.20,16,92,541/-.

7. Thus, the measure given for preferring an appeal under Section 35F(iii), post amendment on 06.08.2014, would be 7.5% of the duty demanded or penalty imposed or both.

8. Therefore, even if, that measure is applied, the Appellant/Assessee has paid more than the amount prescribed under Section 35F(iii) of the 1944 Act.

8.1. Furthermore, we find that the appeal, on merits, has not been adjudicated for nearly, three (3) years.

9. Having regard to the aforesaid circumstances, we are inclined to set aside the impugned order of the Tribunal and direct a hearing of the appeal by the Tribunal, on merits, as expeditiously as possible.

9.1. The interim order granted by this Court on 18.06.2014 shall continue to operate till the adjudication of the appeal by the Tribunal.

10. In these circumstances, the questions of law, as framed, need not be answered.

11. The captioned appeal is disposed of in the aforementioned terms. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

at/sl

To

1. Commissioner of Service Tax
   Large Tax Payer Unit
   1775, Jawaharlal Nehru Inner Ring Road
   Anna Nagar West Extension,
   Chennai - 600 101

2. The Customs, Excise & Service Tax
   Appellate Tribunal
   Chennai - 600 006

+1cc to M/s.A.P.Srinivas,Advocate, S.R.No.45673

C.M.A. No.1567 of 2014

RJ(CO)
CU(13/07/2017)