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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.04.2017
CORAM :
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
Writ Petition (MD) No.15876 of 2014
and
M.P(MD)No.1 of 2014

M/s.Yespee Tyre Retreaders,
Rep by its Partner,
Srinivasan
No.9/328, Andankoil Post,
New Bye Pass Road,
Karur 639 002. ... Petitioner

Vs.

1.The Customs Excise and Service Tax Appellate Tribunal,
No.26, Sasthiri Bhavan,
Annex Building, Haddows Road,
Chennai 6.

2.The Commissioner of Central Excise and Service Tax,
O/o.The Commissioner of Central Excise and Service Tax, No.1, Williams Road,
Cantonment, Tiruchirapalli 1. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 1st respondent dated 18.6.2014 made in Miscellaneous order No.41225 of 2014 in No.ST/S/40891/2014 in ST/40673/2014-DB and quash the same and consequently directing the 1st respondent to take up the Appeal No.ST/40673/2014-DB 8.4.14 on file and dispose the same on merits in accordance with law.

For Petitioner : Mr.P.Murugesan
For 1st Respondent : No appearance
For 2nd Respondent : Mr.R.Nandakumar

ORDER

(Order of the Court was made by **T.S.SIVAGNANAM,J**)

Heard Mr.P.Murugesan, learned counsel for the petitioner and Mr.R.Nandakumar, learned counsel for the second respondent.

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2.This writ petition has been filed challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, (CESTAT), Chennai, dated 18.06.2014. The said order is an interim order in an application filed by the petitioner for grant of the stay of the demand and not to direct the petitioner to effect any pre deposit for the purpose of prosecuting the appeal.

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3.The petitioner's case was based upon a decision rendered by the Tribunal by CESTAT in the case of **Safety Retreading Company Vs. Commissioner of Central Excise, Salem** reported in 2012 (26) STR 225 (Tri.-Chennai).

4.The CESTAT while finding that the petitioner has made out the prima facie case but observed that it has failed to make out a strong prima facie case for waiving the entire pre-deposit along with interest and penalty and therefore, the CESTAT directed the petitioner to pay pre-deposit amount of Rs.15 lakhs. This order was challenged by the petitioner by filing this writ petition contending that the petitioner will not be covered under the category of management maintenance or repair services and they are only a small unit involving re-trading of old tyres.

5.The Division Bench of this Court has entertained this writ petition and granted an order of interim stay on 23.09.2014 initially for a limited period which was extended further by an order dated 13.10.2014.

6.Learned counsel for the petitioner would submit that as against the order passed in the case of **Safety Retreading Company** (supra), the revenue preferred an appeal to the Hon'ble Supreme Court in C.A.No.641 of 2012 and pending disposal of the appeal, in the said case, the Department was restrained from taking any coercive steps for recovery of any amount of penalty levied under Section 78 of the Finance Act, 1994 as against the said assessee. Learned counsel for the petitioner further submitted that as against the said order, on 18.01.2017, the Hon'ble Supreme Court has held in favour of the assessee and therefore, the case of the **Safety Retreading Company** (supra) is squarely applicable to the case on hand.

7.Per contra, learned Standing Counsel for the respondent elaborately referred to the factual matrix and referred Section 83 of the Finance Act, 1944 which states that certain sections of Central Excise Act, 1944 would apply and therefore, 35F of the Central Excise Act, 1944 would apply which provides for pre-deposit. Further, it is submitted that W.P.No.3277 of 2013, in the case of Mahabir Enterprises Vs.Commisioner of Central Excise and W.P.No.4525 of 2013 in the case of Orient Poles Vs. Commissioner (Appeal) which were filed by the assessees challenging pre-deposits orders, were dismissed.

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8.In the light of the fact that the Hon'ble Supreme Court has taken a decision in the case of **Safety Retreading Company**

(Supra), we are of the view that the Tribunal should consider as to the effect of the said judgment to the case on hand. Therefore, we are inclined to remit the matter back to the Tribunal for fresh consideration.

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9.Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the CESTAT for fresh consideration and the Tribunal shall take into consideration as regards the applicability of the decision rendered by the Hon'ble Supreme Court in C.A.No.641 of 2012, dated 18.01.2017 in the case of **Safety Retreading Company** (Supra) and pass appropriate orders on merits and in accordance with law. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Customs Excise and Service Tax
   Appellate Tribunal,
   No.26, Sasthiri Bhavan,
   Annex Building, Haddows Road, Chennai 6.

2. The Commissioner of Central Excise
   and Service Tax,
   O/o.The Commissioner of Central Excise
   and Service Tax, No.1, Williams Road,
   Cantonment, Tiruchirapalli 1.

+1 cc to Mr.R.Nandakumar, Advocate, SR.No.19049
+1 cc to Mr.N.Shanmuga Selvam, Advocate, SR.No. 19183

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and
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MKV-JC-SAR 3/17.4.2017/3P-5C

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