

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition No.1734 of 2017

Order:

The petitioner has come up with the above writ petition challenging an Order-in-Original refusing to grant refund arising out of the order passed by the CESTAT.

2. Heard Mr. K.Vijaya Kumar, learned counsel for the petitioner and Mr. Suresh Kumar Routhu, learned Standing Counsel for the respondents.

3. As against 3 Orders-in-Original, passed during the period from December, 2012 to January, 2013, the petitioner filed 3 statutory appeals all of which were rejected by the Appellate Authority by order dated 28-5-2015.

4. But the appeals filed by the petitioner were allowed by the CESTAT by a final order dated 30-12-2015, on the basis of a decision of Ahmedabad Bench of CESTAT, which got confirmed by the Division Bench of the Gujarat High Court. In fact, the Department took the stand before the CESTAT that the decision of the Ahmedabad Bench as confirmed by the Gujarat High Court was the subject matter of a special leave petition before the Supreme Court and that the Supreme Court allowed the refund to be made subject to the condition that the assessee furnished a bank guarantee for half of the amount. But since the order of the Supreme Court was an interim arrangement, the CESTAT allowed the appeals filed by the petitioner. The order dated 30-12-2015 at

least as on date has attained finality, since no appeal filed by the petitioner has so far been numbered and put up even for admission.

5. On the basis of the decision of the CESTAT dated 30-12-2015, the petitioner sought refund. But the Adjudicating Authority refused the refund on the ground that the order of CESTAT could be implemented only on the same terms on which the Supreme Court passed the interim orders in the case arising out of the Gujarat High Court. Therefore, the petitioner is before us.

6. It is true that the order of CESTAT on the basis of which the petitioner became eligible for refund, was passed on the strength of the decision of the Ahmedabad Bench of CESTAT. It is also true that the decision of the Ahmedabad Bench of CESTAT is the subject matter of a special leave petition pending before the Supreme Court.

7. But insofar as the case of the petitioner is concerned, the lis between the petitioner and the department has attained finality with the decision of the CESTAT dated 30-12-2015.

8. The contention of the learned Standing Counsel is that the department filed an application for review and that the same was dismissed only on 20-10-2016 and that therefore within the period of limitation prescribed, the department has come up with an appeal before this Court.

9. But the cause of action for the department to file an appeal arose out of the order of CESTAT dated

30-12-2015. An application for modification of a final order made by the department and which was dismissed on 20-10-2016 cannot extend the period of limitation for the department to file an appeal against the 1st order dated 30-12-2015.

10. As a matter of fact, the department has stated in the counter affidavit that they are going to file an appeal. In para-4(III) of the counter affidavit, it is stated as follows:

“It is submitted that the appeals are being filed by the department before the Hon’ble High Court of Judicature at Hyderabad for The State of Telangana and The State of Andhra Pradesh against the Final Orders of Hon’ble CESTAT, Hyderabad.”

11. However, the learned counsel states that the appeal has been filed and S.R. number has been given.

12. The department which chose to go into slumber from 30-12-2015 did not even wake up after the order dismissing the application for modifying the final order, passed by the CESTAT on 20-10-2016. In other words, the department has chosen to file an appeal, if what is stated across the Bar is correct, only after the order impugned in the present writ petition. Therefore, the finality has attached to the order of the Tribunal in the case of the petitioner cannot be overcome by this *post facto* remedial measure.

13. Hence, the writ petition deserves to be allowed. Accordingly, it is allowed. The respondents are directed to refund the amount within a period of 8 (eight) weeks from the date of receipt of a copy of this order. The miscellaneous

petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

07th March, 2017.
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