HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.E.A. No.80 of 2016

Order: (per V.Ramasubramanian, J.)

Aggrieved by the dismissal of their application for modification of a conditional order of stay passed by CESTAT, the assessee has come up with the above appeal under Section 35G of the Central Excise Act, 1944.

2. Heard Mr. A.V.A. Siva Kartikeya, learned counsel for the appellant. Mr. M.V.J.K. Kumar, learned Senior Standing Counsel, takes notice for the respondent.

3. The appellant has raised in the Memorandum of Grounds of Appeal, the following questions of law:

(i) Whether on facts and in circumstances of the case, the Hon'ble Tribunal was right in not considering the binding effect of the notifications issued by the Central Board of Excise and Customs?

(ii) Whether on facts and in circumstances of the case, the Hon'ble Tribunal was right in sustaining the order of the Adjudicating Authority, that the tippers are different from dumpers and they cannot be treated as capital goods even though both are used for the business for providing output services and are used for transporting excavated material from open cast mines to the dumping yard?

(iii) Whether on facts and in circumstances of the case, the Hon'ble Tribunal is right in sustaining the order of the Adjudicating Authority that the Assessee has wrongly claimed CENVAT Credit as it had purchased the disputed goods prior to the Assessee's service became taxable, in the face of Rule 3(3) of the CENVAT Credit Rules, 2004? and

(iv) Whether on facts and in circumstances of the case, the Hon'ble Tribunal is right in dismissing the appeal on the ground of non-compliance of pre-deposit, despite the fact that the appellant had a fair chances of success in the appeal in view of the amendment to the CENVAT Credit Rules, 2004 by the Central Board of Excise and Customs vide Notification 25/2010 (N.T.) dated 22-6-2010 and the law laid down by the Apex Court to the effect that such amendments are clarificatory and have to be given retrospective effect?

4. But we do not think that any of those questions would arise for consideration in this appeal. The reason for our view is as follows.

5. As against an Order-in-Original passed on 06-5-2009, the appellant filed a regular appeal before CESTAT along with the application for waiver and application for stay. The Tribunal passed an order dated 31-5-2010, directing the appellant to deposit the entire amount of service tax liability within four weeks. The appellant thereafter filed an application for extension of time to comply with the order. The application for extension of time was also allowed on 15-11-2010.

6. Unable to make payment even before the extended time, the appellant filed an application for modification of the original order. That application was dismissed by the Tribunal by the order impugned in this appeal.

7. Therefore, it is clear that the appellant originally agreed to comply with the conditional order and sought time. Later they wanted modification, which was rightly rejected by the Tribunal. Therefore, the questions of law do not arise for consideration. Hence, this appeal is dismissed.

The miscellaneous petitions, if any, pending in this appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

ABHINAND KUMAR SHAVILI, J.

20th October, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.E.A. No.80 of 2016
(per VRS, J.)

20th October, 2017.
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