THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
and
THE HON'BLE SMT JUSTICE J. UMA DEVI

WRIT PETITION Nos.12045 and 12077 of 2017

COMMON ORDER: **(per VRS, J)**

The petitioners in these cases suffered orders-in-original at the hands of the adjudicating authority for payment of service tax. The orders-in-original passed in the year 2013 became the subject matter of appeals before CESTAT. At the time when the appeals were entertained by CESTAT, the Tribunal granted total waiver of the pre-deposit condition and stay on the ground that the petitioners had an excellent case on merits.

Eventually, by orders dated 02.09.2015, CESTAT allowed the appeals filed by the petitioners and remanded the matter back to the adjudicating authority for a *de novo* disposal.

By fresh orders-in-original passed on 16.01.2017, the original adjudicating authority has again confirmed the demand. As against these orders-in-original, the petitioners have filed statutory appeals on 29.03.2017. But CESTAT is not entertaining these appeals on the ground that the petitioners should comply with the pre-deposit condition of 7.5%. It is necessary to point out at this juncture that with effect from 06.08.2014, the appellants became obliged to make a pre-deposit of 7.5% of the demand for entertainment of the appeals, without leaving any scope for the appellate authorities to exercise discretion to grant waiver from 0% to 100%.

Finding that things have become worse off after having succeeded in the appeal before CESTAT on account of the amendment introduced with effect from 06.08.2014, the petitioners have come up with the present Writ Petitions seeking a mandamus to direct the appellate authority not to insist upon the pre-deposit of 7.5% of the demand.

Heard Mr. K. Rajendran, learned counsel for the petitioners.

Mr. B. Narayana Reddy, learned Assistant Solicitor General, takes notice for the respondents.

It is true that the petitioners, who originally obtained a total waiver of the pre-deposit condition in the first round of litigation and who also succeeded before the appellate authority, have now become worse off. But this hardship, financial or otherwise, cannot be the ground for the Court to issue a writ of mandamus to direct the respondents not to insist upon the pre-deposit. If something is required to be done by law in a particular manner, it shall be done only in that manner and not otherwise. A writ of mandamus can be issued to direct the respondents to perform a statutory duty. It cannot be issued for a direction to the respondents not to perform a duty imposed by a statute.

Let us take a reverse case. Let us assume hypothetically that the petitioners were directed to deposit 50% in the first round. In case they had succeeded and the matter got remitted back and the petitioners had suffered a similar order, the department cannot insist upon the petitioners for making a pre-deposit of the very same 50% on the ground that it has now become worse off due to the amendment. In any case, the question as to whether the amendment with effect from 06.08.2014 would apply to cases where show cause notices were issued before 06.08.2014 came up for consideration before a Bench of Madras High Court. By a judgment in **M/s. Dream Castle v. Union of India {W.P.No.13431 of 2015 and W.A.No.1424 of 2015}** to which one of us (VRS, J) was a Party, it held that the said contention cannot be accepted.

The petitioner has not challenged the scope of the amendment dated 06.08.2014. When the amendment mandates the appellate authority to entertain the appeal only after deposit of

7.5% of the tax, there cannot be a mandamus to direct the appellate authority to entertain the appeal in a manner not stipulated by law.

Therefore, the Writ Petitions are dismissed.

Pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

6th APRIL, 2017.

J. UMA DEVI, J

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