HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE G. SHYAM PRASAD

Writ Petition No.43951 of 2016

ORDER: *(per V. Ramasubramanian, J.)*

The petitioner has come up with the above writ petition seeking a direction to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) to dispose of the application for restoration of appeal that was dismissed for non-compliance with an order passed in an application for waiver of pre-deposit condition.

2. Mr. S. Ravi, learned senior counsel appearing for the petitioner and Mr. M.V.J.K. Kumar, learned senior counsel appearing for the respondents.

3. By an Order-in-Original dated 28-10-2013, the Adjudicating Authority determined the service tax payable by the petitioner to a tune of Rs.2,04,56,018/-. The Adjudicating Authority also demanded amounts of Rs.3,38,930/- and Rs.5,18,551/-, apart from making a demand for interest and imposing a penalty for an equivalent amount.

4. As against the said order, the petitioner filed a statutory appeal before the CESTAT along with an application for stay and waiver. By an order dated 13-02-2014, the Tribunal directed the petitioner to deposit a sum of Rs.2,00,00,000/- within six weeks. Since the condition was not complied with, the appeal was dismissed by an order dated 02-04-2014.

5. It appears that thereafter the amount as directed by the Tribunal came to be paid by the Principal Contractor. Therefore, the petitioner filed an application for restoration of the appeal before the CESTAT. The said application is now pending.

6. But in the meantime, the respondents have issued Garnishee orders to respondents 4 and 5 who owed money to the petitioner. Therefore, the petitioner has come up with the above writ petition.

7. There is no denial of the fact that the amount as ordered by the Tribunal on 13-02-2014 has now been paid. There is also no dispute about the fact that the restoration application is now pending before the Tribunal. Therefore, we are of the considered view that crippling the petitioner at this stage may not be in the interest of either of the parties.

8. However, the fact remains that the amount that ought to have been paid by the petitioner by April, 2014, had been paid only after a period of two years. Therefore, we are of the considered view that by imposing certain restrictions, the Garnishee orders could be lifted.

In view of the above, the writ petition is disposed of to the following effect:

1) The Garnishee orders issued by the official respondents will stand lifted, except to the extent of Rs.60,00,000/-. In other words, the 4th respondent shall keep in deposit a sum of Rs.60,00,000/- and release the balance amount to the petitioner.

2) The 5th respondent shall also release the full amount payable to the petitioner.
3) The amount of Rs.60,00,000/- retained by the 4th respondent shall be kept in fixed deposit but shall not be paid to the petitioner until the appeal or restoration application is disposed of by the Tribunal.
4) The Tribunal is requested to dispose of the restoration application within a period of eight weeks.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 04-01-2017

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