The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice M.S.K.Jaiswal

C.E.A.No.148 of 2015

Dt: 21-12-2017

Between:

Madanapalle Municipality
Rep. by its Commissioner
Madanapalle

....Appellant

and

The Commissioner of Customs, Central Excise
& Service Tax, rep. by its Commissioner,
Tirupathi.

....Respondent

Counsel for the Appellant: **Mr.B.Farook for Mr.Md.Saleem, SC for Municipality**

The Court made the following:

Judgment: **(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

In this Appeal filed against Order, dated 07-09-2015, in Appeal No.ST/2884/2012-DB, on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short 'the Appellate Tribunal'), the appellant- Madanapalle Municipality has framed the following substantial questions of law:

> "a) Whether the Hon'ble Tribunal is right in dismissing the appeal even though the retrospective amendment with regard to the payment of service tax is pending before the Hon'ble Apex Court.
>
> b) Whether the Hon'ble Tribunal is right in dismissing the appeal without considering the legal aspect that the retrospective amendment with effect from previous date could only create a tax liability but not the liability to pay interests and penalties retrospectively.
>
> c) Whether the Hon'ble Tribunal is right in dismissing the appeal without discussing the aspect of limitation for the demand notice."

We have heard the learned Standing Counsel for the appellant- Municipality and perused the record.

Feeling aggrieved by Order, dated 17-07-2012, in Appeal No.51/2012(T)ST, on the file of the Commissioner, Customs, Central Excise and Service Tax (Appeals), Guntur, the appellant has filed Appeal No.ST/2884/2012-DB, before the Appellate Tribunal. Along with the said Appeal, it has filed Stay Application No.ST/Stay/2080/2012. The said application was disposed of by the Appellate Tribunal, by its Order under Appeal, wherein it has observed that the said Application was coming up from February, 2013; that the same was being repeatedly adjourned; and that when the case was called on 30-12-2014, neither any one represented the appellant nor any request for adjournment was made though notice was served on the appellant well in advance. The Appellate Tribunal has, accordingly, directed the appellant to deposit the entire dues within a period of eight weeks and report compliance on 02.03.2015, failing which the Appeal itself would become liable to be dismissed. Evidently, as the appellant has not deposited the dues in terms of the said Order, the Appellate Tribunal has dismissed the Appeal.

In our opinion, the Order dismissing the Appeal is consequential to Order, dated 30-12-2014. It could be seen from the Memorandum of Grounds of Appeal that the appellant has failed to question Order, dated 30-12-2014, passed in the stay application. Unless the appellant has questioned the said order, it is not entitled to question the consequential order.

For the afore-mentioned reasons, this Appeal is wholly misconceived and the same is, accordingly, dismissed.

As a sequel to dismissal of the Appeal, CEAMP.Nos.130 of 2015 and 26 of 2016 are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Date: 21-12-2017
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