IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Mrs. Justice T. RAJANI

C.E.A.No.149 of 2017

Between:

M/s. R.K. Infra & Engineering (India) Pvt. Ltd.,
represented by its Director B. Sasikiran,
1-2-49/15, Hydernagar, Nizampet Road, Kukatpally,
Hyderabad

… Appellant

Vs.

The Commissioner of Customs & Central Excise,
Hyderabad-IV Commissionerate, Posnett Bhavan,
Tilak Road, Ramkoti, Hyderabad

…. Respondent

For Petitioner : Dr. M.V.K. Murthy,

For Respondents : Mr. B. Narasimha Sarma

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE MRS. JUSTICE T. RAJANI

C.E.A.No.149 of 2017

ORDER: *(V. Ramasubramanian, J)*

Aggrieved by the condition imposed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Hyderabad, for the grant of stay, the assessee has come up with the above writ petition.

2. Heard Dr. M.V.K. Moorthy, learned counsel for the appellant and Mr. B. Narasimha Sarma, learned standing counsel for the Department.

3. The appellant suffered an Order-in-Original, by which a liability of Rs.16,51,26,861/- was slapped on them. An equivalent amount was imposed as penalty apart from other levies.

4. As against the said order, the appellant filed a statutory appeal before CESTAT, after making a deposit of Rs.2.00 crores. Actually, the appellant was obliged to deposit only 7.5% of the disputed liability. But the appellant was gracious enough to deposit more than the statutory limit of 7.5%.

5. With the hope that such an act will be reciprocated with a good gesture, the appellant made an application for stay before the Tribunal. But the Tribunal granted stay on condition that the

appellant deposits an additional amount of Rs.1.60 crores. Aggrieved by the said condition, the appellant is before us.

6. Generally the orders of the nature under challenge are discretionary orders, into which no interference would be as the normal rule and interference will be the exception. Keeping this fundamental principle in mind, if we look at the impugned order, it is seen that the total liability fixed under the Order-in-Original was Rs.16.50 crores. The appellant has deposited Rs.2.00 crores. The appellant was asked to deposit an additional amount of Rs.1.60 crores, only on account of factual finding that the petitioner has raised invoices and bills on the recipients of the service, for payment of the service tax also. The fact that the appellant was not able to recover money from the service recipients, cannot be a matter of concern for the Department.

7. To put it differently, if the appellant had been successful in recovery of the money from the service recipients, the appellant would have been asked to pay the entire amount of Rs.16.50 crores. No concession could have been shown to them in that contingency. Therefore, there are no merits in the appeal.

Hence, the appeal is dismissed. Since the time limit for complying with the order expires tomorrow i.e. on 29-08-2017, the appellant is granted time up to 03-10-2017 for complying with the condition.

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

V. RAMASUBRAMANIAN, J

T. RAJANI, J

Date: 28-08-2017

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