* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

+ C.E.A. No.4 of 2017

% Date: 02-8-2017

M/s. Emmar Logistics Pvt. Ltd.,
D.No.30-7-17, 1st Floor,
Women's Indians Association Mansion,
Dabagardens, Visakhapatnam-20

... Appellant

Vs.

$ 1. Commissioner of Customs, Central Excise
& Service Tax, Visakhapatnam-1

2. CESTAT (Customs, Central Excise & Service Tax
Appellate Tribunal);, Regional Bench, Hyderabad

... Respondents

! Counsel for Appellant : Mr. P.N. Sunil Kumar Reddy

Counsel for Respondents : Smt Sundari R. Pisupati,
Senior Standing Counsel
for CEC and ST

< Gist:

> Head Note:

? Cases referred:
Nil.

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Judgment: (per V.Ramasubramanian, J.)

Aggrieved by an onerous condition imposed by CESTAT for the grant of waiver as well as the stay, the assessee has come up with the above appeal under Section 35(G) of the Customs Act, 1962.

2. Heard Mr. P.N. Sunil Kumar Reddy, learned counsel for the petitioner and Smt. Sundari R. Pisupati, learned Senior Standing Counsel for the Department.

3. As against an Order-in-Original confirming a demand of Rs.27,88,750/- for the period from 2007-08 to 2009-10 under Rule 14 of the CENVAT Credit Rules, 2004, the petitioner/ assessee filed a statutory appeal before CESTAT, along with the applications for waiver and stay. By an order dated 18-12-2015, the CESTAT granted stay and waiver on condition that a sum of Rs.22 lakhs is paid. Aggrieved by the said order, the petitioner is before us.

4. On and from 06-8-2014, the requirement of pre-deposit has been amended. By the said amendment, it is enough if an assessee pays 10% of the demand, for the purpose of maintaining an appeal. But unfortunately, the Order-in-Original in the case of the petitioner was passed on 31-01-2012, prior to the amendment. Therefore, the Tribunal had the discretion to permit waiver from 0% to 100%.

5. But the order of the Tribunal discloses that no rhyme or reason was given for fixing an amount of Rs.22 lakhs. After extracting the case of the appellant in the first 3 paragraphs, the Tribunal passed the impugned order in 2 paragraphs. These 2 paragraphs, namely, paragraphs-4 and 5 of the order of the Tribunal read as follows:

> "4. Having heard both sides and perused the records, we are unable to accept the claim of the appellant that they have, *prima facie*, a case in their favour.
>
> 5. Accordingly, we direct the appellants to make a pre-deposit of Rs.22,00,000/- within four weeks as a condition for staying recovery of the balance amount confirmed in the impugned order."

6. Since no reason has been stated by the Tribunal for coming to the conclusion, we are of the considered view that the order of the Tribunal requires to be set aside. Since no reasons are stated by the Tribunal for fixing the amount of Rs.22 lakhs, out of a demand of Rs.27,88,750/-, the ideal course of action for us would be to remand the matter back to the Tribunal for reconsideration. But we do not propose to do so, since the appeal before the Tribunal was filed in the year 2014 and the impugned order was passed in December, 2015. Therefore, rather than making an order of remand for the purpose of reconsidering the application for waiver and stay, we are of the view that we could ourselves fix an amount and direct the Tribunal to take up the main appeal for disposal if the condition imposed by us is complied with.

7. As seen from the Order-in-Original, the demand arose on account of the allegation that the assessee had taken

CENVAT credit on the entire input services used for providing exempted services as well as output service on which service tax is payable. Therefore, this is not a case where the petitioner may be entitled to 100% waiver. But at the same time, this is a case where hardship is pleaded by the petitioner. Therefore, we are of the considered view that by directing the petitioner to pay 1/3rd of the duty demanded, the application for waiver and stay could be allowed. But 1/3rd of the demand comes to little more than Rs.9 lakhs. Therefore, we would round it off to Rs.10 lakhs.

8. In view of the above, the appeal is allowed, the order of the Tribunal is set aside and the petitioner is granted a time of 8 (eight) weeks from the date of receipt of a copy of this order to deposit a sum of Rs.10,00,000/- (Rupees ten lakhs only) with the original authority. Upon such deposit being made within the period stipulated and upon the petitioner filing a memo to the said effect before the Tribunal, the Tribunal shall take up the main appeal and dispose of it in accordance with law. If the petitioner had paid any amount out of the demand made under the Order-in-Original, the same shall be given credit to as against the amount fixed by this order. The miscellaneous petitions, if any, pending in this appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

T.RAJANI, J.

02nd August, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

C.E.A. No.4 of 2017
(per VRS, J.)

02nd August, 2017.
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