THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

CENTRAL EXCISE APPEAL Nos. 95 of 2014 and 141 of 2015

COMMON JUDGMENT: ***(Per VRS,J)***

The assessee has come up with the above appeals under Section 35G of the Central Excise Act, 1944, challenging (1) a conditional order passed by the CESTAT for the grant of waiver and stay, and (2) a consequential order dismissing an appeal for non-compliance with the conditional order.

2. Heard Mr. Lakshmi Kumaran, learned counsel for the appellant in both these cases, Mr. B. Narasimha Sharma, learned senior standing counsel for Customs and Central Excise, appearing for the respondent in one case, and Ms. Sundari R Pisupati, learned senior standing counsel for Customs and Central Excise, appearing for the respondent in the other case.

3. By an order in original, dated 31.10.2013, the Commissioner of Customs confirmed the demand of service tax to the tune of Rs.1.98 crores, on the ground that the appellant/assessee was rendering commercial training and coaching services. As against the said order, the appellant filed a statutory appeal on 15.01.2014 before the CESTAT along with an application for stay.

4. By an order, dated 21.02.2014, the CESTAT granted stay on condition that the appellant deposits Rs.1.75 crores. Aggrieved by the

said order, the appellant filed C.E.A.No.95 of 2014 before this Court. The appeal was admitted by this Court on the substantial question as to whether the Tribunal was justified in refusing to grant full waiver.

5. In the meantime, the Tribunal passed a final order on 06.08.2015, dismissing the appeal for non-compliance with the pre-deposit amount. Aggrieved by the order of dismissal of the appeal, the appellant came up with the second appeal, namely, C.E.A.No.141 of 2015.

6. Thus, we have on hand two appeals, one arising out of the conditional order passed in an application for waiver and stay, and another arising out of the dismissal of the main appeal by the Tribunal for non-compliance with the conditional order.

7. Today, we do not think it necessary to go into the questions raised in these appeals, in view of a subsequent development. It appears that the appellant has now paid the amount of Rs.1.75 crores as ordered by the Tribunal. The counsel for the appellant has filed a memo showing that the entire amount has been paid on 03.03.2017. In other words, the conditional order passed by the Tribunal on 21.02.2014 has been complied with, though after a period of three years. Therefore, the only question that we are called upon to consider is as to whether the same can be taken note of to rejuvenate the appeal filed by the appellant.

8. Now, it is contended by both the learned senior standing counsel for the Department that once a conditional order of stay and waiver was not complied with, resulting in dismissal of the appeal itself, the question of giving a new lease of life to the appeal would not arise, especially when the appellant complied with the conditional order after three years. But we do not think that the said logic would apply to a case of this nature. The appellant in these cases claimed in the first round of litigation that the services rendered by them cannot be brought within a particular classification. The classification dispute went up to the Hon'ble Supreme Court. When it was pending in the Hon'ble Supreme Court, an amendment came with the retrospective effect, which made the Hon'ble Supreme Court to remand the matter back to the Tribunal. Therefore, this is a case where the question of classification itself was in doubt and the matter was traveling back and forth. In such circumstances, the compliance with the conditional order, though belatedly made, can be taken note of. After all, by giving a new lease of life to the appeal, the appellant would only have an opportunity to argue the main appeal before the Tribunal on merits. No damage will be caused to the respondent-Department, by giving an opportunity to the appellant to argue the matter on main appeal.

9. Therefore, both these appeals are disposed of, directing the Tribunal to accept the payment made by the appellant as sufficient compliance with the conditional order, revive the main appeal, and

take it up for disposal. The main appeal shall stand revived and the Tribunal may fix a date for hearing and dispose it of, in accordance with law.

Consequently, miscellaneous petitions if any pending in the appeals shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

T. RAJANI, J.

3rd August, 2017
cbs

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN √

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

CENTRAL EXCISE APPEAL Nos. 95 of 2014 and 141 of 2015
(disposed of)

3rd August, 2017

cbs

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+C.E.A.Nos.95 of 2014 and 141 of 2015

% 03-08-2017

M/s. Badruka Institute of Foreign Trade,
Kachiguda, Hyderabad .. Appellant

Vs.

$ The Commissioner of Central Excise,
Customs & Service Tax, Hyderabad. .. Respondent

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>HEAD NOTE:

! Counsel for appellant : Mr. Lakshmi Kumaran

^ Counsel for respondent : Ms. Sundari R Pisupati
(in C.E.A.No.95 of 2014)

: Mr. B. Narasimha Sarma
(in C.E.A.No.141 of 2015)

? CASES REFERRED : ----