THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CENTRAL EXCISE APPEAL Nos.208, 209 and 210 of 2017

23.11.2017

Between:

Bhandari Glass Company, Hyderabad and others

..Appellants

And

The Commissioner of Customs, Central Excise and Service Tax,
Hyderabad II Commissionerate, Hyderabad

..Respondent

Counsel for the appellants: Ms.Datla Divya for Mr.Ch.Pushyam Kiran

Counsel for respondent in C.E.A.No.208 of 2017:
Mr.B.Narasimha Sarma,
Standing Counsel for Customs, Central Excise and Service Tax

Counsel for respondent in C.E.A.No.209 and 210 of 2017:
Mr.A.Radha Krishna,
Standing Counsel for Customs, Central Excise and Service Tax

The Court made the following:

<u>COMMON JUDGMENT</u>: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These three are cognate appeals arising out of a common order passed in three appeals by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Hyderabad (for short 'CESTAT').

2. The appellants in C.E.A.Nos.208 and 210 of 2017 are the proprietary concerns belonging to the same group and the appellant in C.E.A.No.209 of 2017 is their proprietor. On 10.06.2008, search was conducted on their premises. Based on the searches, show cause notices were issued by the Additional Director, Directorate of Revenue, Intelligence, Regional Unit, Hyderabad on 24.08.2011. Thereafter, an order was passed on 31.08.2012 by the Additional Commissioner of Customs, Hyderabad II Commissionerate, imposing duty and penalty on the appellants. Questioning the said orders, the appellants filed appeals along with stay petitions before the Commissioner (Appeals). On 29.11.2012, an order was passed on the stay petitions directing the appellants in C.E.A.Nos.208 and 210 of 2017 to deposit duty after deducting the amount, if any, already paid, while deposit of interest and penalty imposed on all the appellants was waived. On 06.01.2013, the appellant in C.E.A.No.210 of 2017 addressed a letter to the Commissioner (Appeals) requesting for permission for depositing 25% of the duty demanded. A further letter was addressed on 22.01.2013 by the said appellant by stating that during the investigation, an amount of Rs.8,00,000/- was deposited and requested for permitting it to deposit 25% of the duty demanded considering the said amount. Declining the said request, the Commissioner (Appeals) on 28.01.2013 dismissed all

the three appeals on the ground of non-compliance with the provisions of Section 129-E of the Customs Act, 1962 (for short 'the Act'). Assailing the said orders, the appellants filed appeals before CESTAT along with stay petitions. Following the same, the Deputy Commissioner of Customs addressed letter, dated 14.02.2014, to the appellant in C.E.A.No.209 of 2017 to deposit penalty of Rs.5,00,000/-. Having given a reply on 06.03.2014 that the appeals and stay petitions were pending before the CESTAT, the appellant in C.E.A.No.209 of 2017 in the capacity of proprietor of the appellant in C.E.A.No.210 of 2017, however, deposited Rs.5,00,000/- under protest on 12.03.2014. By order, dated 08.01.2015, CESTAT directed the appellant in C.E.A.No.208 of 2017 to deposit Rs.75,000/- and the appellant in C.E.A.No.210 of 2017 to deposit Rs.5,00,000/- within eight weeks. On 27.02.2015, the appellant in C.E.A.No.208 of 2017 deposited the sum of Rs.75,000/-. However, the appellant in C.E.A.No.210 of 2017 addressed letter, dated 05.03.2015, to the Deputy Registrar, CESTAT by stating that a sum of Rs.5,00,000/- was already deposited by it, which was not brought to the notice of the CESTAT, and requested to treat that the said appellant has already complied with CESTAT's order, dated 08.01.2015. On 31.03.2015, the Commissioner (Appeals) directed the appellant in C.E.A.No.210 of 2017 to forthwith deposit the amount of Rs.5,00,000/- and that failing which, its appeal would stand dismissed for non-compliance of the CESTAT's order. On 08.04.2015, the said appellant addressed a letter to the Commissioner (Appeals) requesting for eight weeks time for obtaining appropriate order from the CESTAT.

By its order, dated 30.04.2015, the Commissioner (Appeals) granted time till 29.05.2015 for the said purpose. On 12.05.2015, the appellant in C.E.A.No.210 of 2017 filed a miscellaneous petition before the CESTAT to treat the payment of Rs.5,00,000/- prior to the passing of the conditional order by it as constituting compliance with the said conditional order. However, by his order, dated 06.06.2016, the Commissioner (Appeals) dismissed the appeals for non-compliance of the conditional order of the CESTAT. Questioning the said order, the appellants have filed appeals before the CESTAT on 22.08.2016. By order, dated 04.09.2017, the Tribunal dismissed the appeals.

3. Mr.S.Ravi, learned senior counsel appearing for the appellants, has submitted that while the appellant in C.E.A.No.208 of 2017 has duly complied with the conditional order of the CESTAT by depositing Rs.75,000/- within the stipulated time, the appellant in C.E.A.No.210 of 2017, *bona fide,* believed that as Rs.5,00,000/-was already deposited, it is entitled to get the said amount adjusted towards the amount payable as per the conditional order of the CESTAT and that seeking the relief in this regard, it has also filed miscellaneous petition before the CESTAT on 12.05.2015 which was not taken up for consideration at all and no orders thereon were passed. He has further submitted that without considering these aspects, the CESTAT has dismissed the appeals filed by the appellants on the ground of non-compliance of its earlier order pertaining to the condition of pre-deposit. He has also submitted that to show his *bona fides*, the appellant in C.E.A.No.210 of 2017 is prepared to deposit another sum of Rs.5,00,000/-.

4. When these appeals came up for admission and hearing on 16.11.2017, the same were adjourned at the request of Mr.B.Narasimha Sarma, learned standing counsel for Customs, Central Excise and Service Tax, appearing for the respondent, for instructions. Today, we have heard the learned counsel for both the parties and perused the record.

5. From the facts narrated hereinabove, we are convinced that non-deposit of Rs.5,00,000/- in pursuance of order, dated 08.01.2015, by the appellant in C.E.A.No.210 of 2017 is not intentional and on the contrary, it appeared to be under the impression that as it has already paid Rs.5,00,000/- earlier on 12.03.2014 under protest, the same is adjustable against the amount which it was required to deposit in pursuance of conditional order, dated 08.01.2015, of the CESTAT. From the orders of the CESTAT, we find that it has not considered any of the above facts in dismissing the appeals. Furthermore, the miscellaneous petition filed by the appellant in C.E.A.No.210 of 2017 seeking the relief of adjustment of Rs.5,00,000/- paid earlier, is stated to have not been disposed of by the CESTAT. This apart, the appellant in C.E.A.No.210 of 2017 has expressed its willingness to pay another sum of Rs.5,00,000/-, disregarding its earlier stand that it is entitled to the adjustment of the amount of Rs.5,00,000/- already paid.

6. In the light of the above facts and circumstances, we set aside orders, dated 06.06.2016, of the Commissioner (Appeals) and dated 04.09.2017, of the CESTAT, subject to the condition that the appellant in C.E.A.No.210 of 2017 shall deposit a sum of Rs.5,00,000/- (Rupees

five lakhs only) within one month from today. On such deposit, the appeals before the Commissioner (Appeals) shall stand revived and they shall be disposed of on merits. It is needless to observe that if the amount as directed above is not deposited within the stipulated time, these appeals shall stand automatically dismissed.

7. Subject to the above, these Central Excise Appeals are allowed.

8. As a sequel to allowing these Appeals, C.E.A.M.P.Nos.192, 193 and 194 of 2017 filed by the appellants for interim reliefs in C.E.A.Nos.208, 209 and 210 of 2017 respectively shall stand disposed of as infructuous.

____
C.V.NAGARJUNA REDDY, J

____
T.AMARNATH GOUD, J

23rd November, 2017
GHN