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IN THE HIGH COURT OF DELHI AT NEW DELHI

CEAC 7/2017

HERO MOTOCORP ..... Petitioner

Through: Mr S. Ganesh, Senior Advocate with Mr Srinivas Kotni, Mr Mukul Chandra, Mr Sandeep Chatterjee and Mr Sumit, Advocates

versus

COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, MEERUT & ANR ..... Respondent

Through:Mr Deepak Anand, Junior Standing Counsel

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **12.07.2017**

1. This is an appeal by the Assessee under Section 35G of the Central Excise Act, 1944 (‘CE Act’) directed against the order dated 11th January, 2017 passed by the Customs, Excise & Service Tax Appellate Tribunal, Delhi (‘CESTAT’) in Ex. Appeal No. 3575, 3983 of 2010, Ex. Appeal No. 1042 of 2012, Ex. Appeal No. 56758 of 2013 & 56585 of 2013.

2. On 27th March, 2017 while admitting this appeal, the Court framed three questions of law of which Question No. (i) was whether this Court had jurisdiction to entertain and hear the appeal. The said question was framed in view of the preliminary objections raised by the Respondent/Department that this Court does not have the jurisdiction to entertain the present appeal.

3. Mr S. Ganesh, learned Senior Counsel appearing for the Appellant Assessee fairly conceded that in view of the decision of this Court in ***Dharampal Premchand Ltd. V. Commissioner of Central Excise 182 (2011) DLT 654 (DB)***, this Court did not have territorial jurisdiction to entertain this appeal. The Appellant having its unit at Haridwar, Uttarakhand and two of the orders in the assessment proceedings having been passed by the Commissioner Customs, Excise, Dehradun, Uttarakhand, the Appellant would have to approach the High Court of Uttarakhand with the statutory appeal.

4. As regards the objections of the Respondent that an appeal against the impugned order of the CESTAT is maintainable only before the Supreme Court under Section 35L of the CE Act, Mr Ganesh points out that the issue in the present appeal is whether the Appellant can pay the National Calamity Contingency Duty, the education cess and the secondary and higher education cess by utilising the CENVAT credit available with it. In other words, no issue concerning the rate of duty, valuation or classification is involved in the present appeal. He accordingly prays that the appeal may be permitted to be withdrawn with liberty to the Appellant to file a proper appeal before the High Court of Uttarakhand.

5. On the aforementioned contentions, Mr Deepak Anand, learned counsel for the Respondent, does not join issue and submits that the Court may pass appropriate orders permitting the Appellant to withdraw this appeal with liberty to approach the High Court of Uttarakhand with a properly constituted appeal.

6. Mr. Ganesh next contends that the stay granted by this Court on 27th March, 2017 restraining the Respondent from enforcing the pending demands arising out of the show cause notice, penalty and other amounts arising therefrom during the pendency of appeal may be extended by a period of two weeks to enable the Appellant to approach the Uttarakhand High Court for filing an appeal along with an application for stay. Mr. Ganesh points out that the entire amount of disputed duty together with interest has already been paid by the Appellant and the stay of enforcement is only *qua* the penalty. The above plea is vehemently opposed by Mr Deepak Anand, learned counsel for the Respondent who contends that once this Court has held that it has no territorial jurisdiction to entertain the appeal, it cannot continue the stay order passed on 27th March, 2017.

7. Having considered the above submissions, and in the view of the fact that the Appellant has already deposited the disputed duty with interest and the stay *qua* the enforcement of the penalty amount has continued since 27th March 2017, it is directed that the said stay shall stand extended for a period of two weeks from today to enable the Appellant to file a properly constituted appeal before the High Court of Uttarakhand with an application for stay. It is, however, made clear that if the Appellant does not file an appeal and application for stay as directed within the aforesaid period, the interim order dated 27th March, 2017 would automatically stand vacated.

8. As regards the question of limitation, the Appellant may urge the said issue before the High Court of Uttarakhand in accordance with law.

9. The appeal is dismissed as withdrawn with liberty as prayed for and in the above terms.

10. *Dasti* to the parties under the signature of the Court Master.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 12, 2017
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