IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.248 OF 2016

M/s. Abhilasha Associates .... Appellant
Vs.
The Commissioner of Central Excise,
Pune-411 001. .... Respondent

Mr. Prakash Shah with Mr. Vinay Ansurkar & Mr. Jas Sanghavi i/by M/s. Legal Solutions for the Appellant.
Mr. Swapnil Bangur with Ms Ruju Thakkar for the Respondent.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JANUARY 25, 2018

P.C:

1. This appeal was heard at length on 16-1-2018 and the following order was passed after hearing both sides:-

> *"1. This is an appeal challenging the order passed by the Central Excise and Service Tax Appellate Tribunal (CESTAT) on 31st December, 2015.*
>
> *2. Mr. Prakash Shah appearing for the assessee submits that bearing in mind the language of section 80 of the Finance Act, 1994, then on the statute book, penalty is not mandatory, but there is a power reserved in*

> *the authority, including the tribunal to delete the same, if the assessee proves that there was reasonable cause for the failure to pay the tax in time and if not, then, the interest on the same as charged by the Revenue.*
>
> *3. Mr. Shah would submit that in para 4 of the order under challenge, cause was shown for non payment and it was also pointed out that because of financial crises and ill health of the husband of the sole proprietor, the tax, though collected, could not be remitted and credited to the Government treasury. The tax liability with interest, however, was cleared even before the issuance of the show cause notice. Mr. Shah complains that this was the cause shown and in his opinion, reasonable.*
>
> *4. We would have ordinarily, therefore, been compelled to entertain this appeal, thereafter quash and set aside the order under challenge and remand the matter back to the tribunal. However, we avoid all this on the specific assurance from Mr.Shah that in addition to the amount of penalty deposited at the time of the stay application together with balance amount of interest can be appropriated by the Revenue and no refund of the same will be sought. We called upon Mr. Bangur to take instructions in the peculiar facts and circumstances of the case by referring to the records. Mr. Bangur states that the officer is not present today and he seeks time.*
>
> *5. We defer the matter for passing orders to 25th January, 2018 to appear under caption "For Passing Orders"."*

2. In continuation of this order, the matter was placed today so that we can finally dispose of the appeal. Today, when the matter was called out, Mr. Swapnil Bangur says that the Revenue has instructed him to make a statement that complete

satisfaction of the condition imposed on the assessee while granting interim relief/stay has not been made and the calculation and computation made by the assessee is incorrect. The correct calculations are now provided to him by the Revenue officials. In terms of this corrected calculation, the compliance will have to be made.

3. When a copy of these particulars, which are taken on record, were provided to Mr. Shah, learned Advocate appearing for the assessee, he makes a statement, on instructions, that in terms of these calculations if there is any deficit or shortfall, the assessee will make that good within a period of two weeks from today. We accept the statement made by Mr. Shah, on instructions, as an undertaking to this Court.

4. In the event compliance is made within this additional period and to the satisfaction of the concerned officials, then, the impugned order to stand quashed and set aside and the appeal then to be heard afresh on merits and in accordance with law and thereafter the appeal stands restored to

the file of the Tribunal and the Tribunal shall not dismiss it on the ground that there is lack of complete satisfaction with the condition imposed on the assessee while granting the interim stay. The appeal should be decided uninfluenced by any earlier observations and conclusions. We clarify that all contentions of both sides on the merits of the appeal are kept open and we have not expressed any opinion thereon. The appeal is accordingly allowed and stands disposed of.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)