IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 298 OF 2016

M/s. Total Management Services ..Appellant
versus
Commissioner of Central Excise, Pune ..Respondent

Mr. Bharat Raichandani i/b. UBR Legal for Appellant.
Mr. Swapnil Bangur for Respondent.

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

DATE : 23RD JANUARY, 2018

P. C. :

1] The complaint before us is that the Tribunal has dismissed the appeal of the assessee appellant without adjudication on merits.

2] From the record it appears that the Tribunal entertained an appeal and a stay application of the appellant assessee. On the said stay application, the Tribunal had passed a conditional order. That order of 16th July 2012 mandates that the appellant applicant shall pay the remaining service tax along with interest within eight weeks from the date of that order, namely, 16th July 2012.

3] The matter was posted for reporting compliance. On that date compliance was not reported. In normal course, the appeal was listed for hearing and final disposal and at that stage the Revenue brought on record a report which indicated that the assessee appellant had not paid the amount in terms of the order dated 16th July 2012. He claims to have deposited the tax amount but not the interest component. This agitated the Tribunal and it proceeded to dismiss the appeal for non compliance with the conditional stay order.

4] Mr. Raichandani would submit that there is a substantial question of law, in the sense, the Tribunal has erred in dismissing the appeal without adjudication on merits and particularly when it had no such power.

5] After hearing both sides at some length, we do not wish to entertain this appeal or decide any larger or wider question. Eventually the appellant assessee before us seeks adjudication of the appeal on merits. He is interested in placing his version on merits for due consideration of the Tribunal. We are also interested in rendering substantial justice and not deciding the larger issues, we therefore deem it fit to balance rights and equities. We balance them by directing the appellant to pay interest component and which is crystallized in the sum of Rs.27,00,000/- (Rupees Twenty Seven Lakhs) within a period of six weeks from today and report compliance to the Tribunal. If the amount is deposited, receipt or evidence is produced, the Tribunal shall revive the appeal of the appellant for adjudication on merits and in accordance with law. If the amount is not deposited as directed then the appeal stands dismissed and without any adjudication on merits. We clarify that we will not extend the time under any circumstances.

6] The appeal is disposed of accordingly.

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

Chandka