HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.2812 of 2018

ORDER: (*per Hon'ble Sri Justice Sanjay Kumar)*

The prayer of the petitioner in this case reads as under:

> "For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Honourable Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of *Mandamus* declaring the action of the Honorable CESTAT in dismissing the Appeal No.E/30835/2017 dt 26.10.2017 and restoration Final Order No.M/31785/2017 dt 26.10.2017 as illegal, arbitrary and in violation of principles of natural justice and consequently, to direct the Honorable CESTAT to hear and pass such other order or orders as deem fit and proper in the circumstances of the case."

It is an admitted fact that by the Order-in-Original dated 29.7.2013, the Additional Commissioner, Office of the Commissioner of Customs and Central Excise, Hyderabad-I Commissionerate, confirmed the demand for payment of central excise duty along with interest thereon and penalty from M/s M.S. Agarwal Foundries Private Limited, Medak District, apart from imposition of penalty of Rs.1 lakh upon Pramod Kumar Agarwal, the Director of M/s M.S. Agarwal Foundries Private Limited. Aggrieved by the same, only M/s M.S. Agarwal Foundries Private Limited preferred an appeal before the Commissioner of Customs, Central Excise and Service Tax (Appeals-I & III), Hyderabad. The said appeal was dismissed by the Commissioner, vide order dated 11.12.2013. The said company thereupon preferred AppealNo.E/20969/2014 before the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Hyderabad. By order dated 20.02.2017, the Tribunal took note of the submission made on behalf of the company that it is not contesting the demand or interest or the penalty imposed upon it and that a lenient view may be taken with regard to the penalty of Rs.1 lakh imposed on Pramod Kumar Agarwal, its Director. Finding that the said Director had not filed a separate appeal, the Tribunal disallowed the said plea. It appears that Pramod Kumar

Agarwal, the Director of the said company, thereupon filed Appeal No.E/30835/2017 before the Tribunal and sought condonation of the delay of 1,500 days in preferring the said appeal by way of Application No.E/COD/30495/2017 filed therein. The said application was dismissed by the Tribunal vide order dated 26.10.2017. This is sought to be subjected to challenge presently by Pramod Kumar Agarwal.

We fail to understand as to how the petitioner could have straightaway filed an appeal before the Tribunal when it is an admitted fact that he never filed an appeal against the Order-in-Original dated 29.7.2013 before the Commissioner. The filing of the appeal before the Tribunal was therefore utterly misconceived. We find no grounds to interfere in the matter. The Writ Petition is devoid of merit and is accordingly dismissed.

Pending Miscellaneous Petitions, if any, shall also stand dismissed in the light of the final order. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE T.AMARNATH GOUD

24th July, 2018
DR