THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

I.A.NO.1 OF 2017 IN C.E.A.NO.39 OF 2013
AND
C.E.A.NO.84 OF 2017

C O M M O N   O R D E R
(*Per Sri Justice Sanjay Kumar)*

Order-in-Original No.18/2010-ST dated 30.03.2010 was passed by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, holding M/s. Ambience Constructions India Limited (*hereinafter*, 'the appellant company') liable to pay Rs.74,16,923/- towards service-tax, along with interest and penalties. This order was subjected to appeal before the Customs, Excise and Service Tax Appellate Tribunal, Bangalore (*hereinafter*, 'the Appellate Tribunal'), by the appellant company in ST Appeal No.1745 of 2010. Stay Application No.1026 of 2010 was filed therein by the appellant company seeking waiver of pre-deposit and stay of further proceedings pursuant to the Order-in-Original dated 30.03.2010.

By order dated 10.07.2013, the Appellate Tribunal granted waiver of pre-deposit and stay of all further proceedings pursuant to the impugned Order-in-Original, subject to the condition that the appellant company remitted 50% of the assessed tax liability plus the proportionate interest thereon, excluding the components of penalty under Sections 77 and 78 of the Finance Act, 1994, within eight weeks from that day. The matter was directed to be listed on 30.09.2013 for reporting compliance. The Appellate Tribunal also made it clear that in the event of default in making the deposit within the time stipulated, the stay granted would stand dissolved without further reference to it. The order also recorded that the counsel for the appellant company was present to note the order and thereby, sufficient intimation was given to it of its obligations thereunder.

Aggrieved by the conditions imposed, the appellant company filed CEA No.39 of 2013 before this Court under Section 35G of the Central Excise Act, 1944 (*for brevity*, 'the Act of 1944'). This appeal was disposed of by a Division Bench of this Court comprising the then Hon'ble The Chief Justice and one of us, SK,J, on 05.12.2013. The Division Bench opined that technical undue hardship had been established, whereupon the Appellate Tribunal had granted part-relief. However, keeping in mind that the Appellate Tribunal had itself observed that the question of limitation had to be gone into, the Division Bench found that true hardship would be caused to the appellant company if it had to pay the interest component. The order passed by the Appellate Tribunal was accordingly modified by waiving the interest component in full but retaining the rest of the order as it was. However, waiver of the interest component was subject to the condition that the appellant company executed a bond covering 50% of the said interest component within seven days from the date of receipt of a copy of the order. This bond was to be executed by the appellant company in favour of the Commissioner of Central Excise, Hyderabad-II, binding itself to pay the said interest amount.

Admittedly, the appellant company failed to abide by the conditional order passed by the Appellate Tribunal, in so far as it was retained, and the conditional order passed by this Court, within time.

While so, Stay Application No.1026 of 2010 in ST Appeal No.1745 of 2010 came up for hearing before the Appellate Tribunal on 07.04.2014 but when the matter was called for noting compliance, there was no representation for the appellant company. The Appellate Tribunal noted that the record contained a Memo filed by the appellant company stating to the effect that an appeal had been filed before the High Court; that the appeal was heard on 24.09.2013; that notice was ordered to the Revenue; and that the appellant company had sought eight weeks time to report compliance. The Appellate Tribunal noted that the eight weeks sought by way of the said Memo had expired long back and dismissed the appeal for non-compliance with the requirements of Section 35F of the Act of 1944, made applicable to service-tax matters.

The appellant company thereupon sought restoration of the appeal by filing a miscellaneous application in ST/ROA/22615/2014 in ST/1745/2010-DB. This application was dismissed by the Appellate Tribunal by order dated 16.09.2014. Therein, the Appellate Tribunal noted that the appellant company had failed to comply with its earlier order dated 10.07.2013. It was represented on behalf of the appellant company that the High Court had modified the stay order passed by the Appellate Tribunal, *vide* order dated 05.12.2013 passed in CEA No.39 of 2013, directing deposit of 50% of the service-tax and waiving deposit of the interest component, subject to execution of a bond covering 50% thereof within seven days. The Appellate Tribunal however noted that the appellant company did not comply even with the directions of the High Court within the period specified. The appellant company then reported that it had complied with the directions of the High Court beyond the time specified. The Appellate Tribunal thereupon opined that as the time stipulation was fixed by the High Court for making the deposit, it would be inappropriate for it to restore the appeal which was already dismissed for non-compliance with the stay order. The Appellate Tribunal further observed that if any modification was to be made in the directions of the High Court, it could only be done by the High Court. The Appellate Tribunal accordingly refused to restore the appeal.

Aggrieved by the aforestated Final Order dated 07.04.2014 dismissing the appeal and Miscellaneous Order dated 16.09.2014 refusing to restore it, the appellant company filed CEA No.84 of 2017 before this Court under Section 35G of the Act of 1944. The substantial question of law sought to be raised by the appellant company in the said CEA reads as under:

> "Whether in the facts and circumstances of the case, the Hon'ble Tribunal is correct in rejecting the Restoration of Appeal Application filed by the Appellants on the ground that the Appellants delayed in complying with the directions of the Hon'ble High Court?"

Perusal of the Docket Order dated 16.11.2017 passed in CEA No.84 of 2017 reflects that this Court noted that as the appellant company failed to comply with the order dated 05.12.2013 in CEA No.39 of 2013 as regards execution of a bond within the time stipulated and had also not paid 50% of the service-tax, the appeal before the Appellate Tribunal was dismissed. Thereupon, the learned counsel for the appellant company requested deferring of the hearing of the case to enable his client to take corrective steps by filing an appropriate application in CEA No.39 of 2013. It was only thereafter that I.A.No.1 of 2017 was filed in CEA No.39 of 2013 seeking condonation of the delay of 1170 days in filing a petition to condone the delay in compliance with the directions in the order dated 05.12.2013. This I.A. was filed on 20.12.2017. It was returned with objections on 26.12.2017 and was represented finally on 05.02.2018.

It is an admitted fact that the appellant company paid Rs.37,08,462/- towards 50% of the service-tax component only on 09.04.2014, i.e., two days after the dismissal of the appeal by the Appellate Tribunal for non-compliance. The bond required to be furnished in terms of the order dated 05.12.2013 passed in CEA No.39 of 2013 was submitted only on 10.06.2014.

The aforestated undisputed facts clearly demonstrate that the appellant company was utterly negligent in complying with the orders passed by the Appellate Tribunal and thereafter, by this Court, notwithstanding the specific time stipulations mentioned therein. Further, the appellant company was well aware that the Appellate Tribunal had made it clear that in the event it failed to deposit 50% of the assessed tax liability plus proportionate interest within eight weeks from the date of the order, the stay would stand dissolved. Significantly, when this Court modified the aforestated order and waived the interest component fully, the appellant company did not even ask for extension of time to make the deposit of 50% of the service-tax component. However, this Court specifically observed that the rest of the order of the Appellate Tribunal would remain as it was. In effect, the appellant company was bound to comply with the time stipulation of the Appellate Tribunal in so far as deposit of 50% of the tax component was concerned. Further, this Court made it clear that waiver of the interest component would be applicable provided the appellant company executed a bond covering 50% of the interest component within seven days from the date of receipt of a copy of the order. The record shows that the order dated 05.12.2013 was dispatched on 23.01.2014. Though the appellant company claims that it approached the authorities in April, 2014 requesting them to provide a proforma of the bond and also the amount of interest, there is no explanation forthcoming as to why the appellant company failed to deposit 50% of the tax component till 09.04.2014. To compound matters further, the appellant company did not even bother to attend the hearing on 07.04.2014, when the Appellate Tribunal took up the appeal and dismissed it for non-compliance. Such utter carelessness on the part of a litigant cannot be countenanced.

Though it is alleged before us that the appellant company has a good case on merits, we are of the opinion that having failed to safeguard its own interest by complying with the conditional stay orders passed by the Appellate Tribunal and thereafter, by this Court, the appellant company cannot seek further indulgence. There is no explanation forthcoming as to why the appellant company did not at least deposit 50% of the service-tax component immediately after receiving the order dated 05.12.2013. The sheer negligence and carelessness on the part of the appellant company all through demonstrate that it had no intention of taking timely steps to safeguard its own interest. It is therefore too late in the day for the appellant company to come before this Court to claim further indulgence.

As already pointed out, it was only after this Court observed that no steps had been taken to seek extension of time for complying with the order dated 05.12.2013 in CEA No.39 of 2013 that the appellant company filed I.A.No.1 of 2017 therein seeking condonation of the delay of 1170 days. The delay in presenting this application must also weigh against the appellant company. Despite taking an adjournment on 16.11.2017 in CEA No.84 of 2017 for taking such steps, it was only on 20.12.2017 that the condone delay petition was filed and upon its return with objections, it was represented only on 05.02.2018. This added laxity on the part of the appellant company completely disentitles it from seeking further relief, be it in CEA No.39 of 2013 or in CEA No.84 of 2017. It may also be noted that CEA No.84 of 2017 was itself filed with delay of 82 days in the presentation of the appeal and 56 days in representation.

This Court therefore finds no merit whatsoever in CEA No.84 of 2017 filed by the appellant company assailing the Final Order dated 07.04.2014 dismissing the appeal and the Miscellaneous Order dated 16.09.2014 refusing to restore it. The Appellate Tribunal was well justified in passing both orders.

On the aforestated analysis, this Court finds no grounds whatsoever to interfere in the matter. No question of law, much less a substantial question of law, is raised in CEA No.84 of 2017. Further, this Court finds no grounds made out to condone the exorbitant delay of 1170 days in compliance with the order dated 05.12.2013 in CEA No.39 of 2013.

I.A.No.1 of 2017 in CEA No.39 of 2013 and CEA No.84 of 2017 are accordingly dismissed.

Other pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

P.KESHAVA RAO,J

23rd MARCH, 2018

PGS