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

WRIT PETITION No.33259 of 2017

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the petitioner company 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 Hon'ble CESTAT in dismissing the appeal number E/20969/2014 dt.28-02-2017 and restoration Misc. No order No.M/30146/2017 dt:09-08-2017 is illegal, arbitrary and in violation of the principles of natural justice and consequently direct the Hon'ble CESTAT to here and pass the order on merits and pass such other order or orders as deem fit and proper in the circumstances of the case."

Perusal of the record reflects that the appeal filed by the petitioner company was dismissed by order dated 20.02.2017 and not 28.02.2017. Further, the restoration application filed by the petitioner company was dismissed on 21.07.2017 and not 09.08.2017. Be that as it may.

The appeal filed by the petitioner company was in relation to the Order-in-Appeal dated 11.12.2013 passed by the Commissioner (Appeals), Central Excise and Service Tax, Hyderabad, confirming the order of the primary authority holding the petitioner company liable to pay duty along with interest thereon and penalty in relation to clandestine clearance of goods. It appears that when the appeal was taken up by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Hyderabad, Sri B.V.Kumar, learned counsel for the petitioner company, conceded that the petitioner company was not contesting the duty demand, interest and penalty visited upon it but requested that a lenient view may be taken with regard to the penalty imposed upon the Director of the petitioner company. By the order dated 20.02.2017, the Tribunal opined that as the Director of the petitioner company had not filed a separate appeal, such a request could not be considered and accordingly dismissed the appeal holding that the order under appeal called for no interference.

Thereafter, the petitioner company filed an application seeking restoration of its appeal. Therein, it took the plea that Sri B.V.Kumar, its counsel, was not instructed to make such a concession. The Tribunal dismissed the said restoration application by order dated 21.07.2017 holding that Sri B.V.Kumar, learned counsel, was duly authorized to appear on behalf of the petitioner company as on the date of the disposal of the appeal and the question of raising an issue against his representation at a later date would not arise. Further, taking note of the fact that in the grounds of appeal, the petitioner company specifically stated that it did not choose to contest the demand of duty and the interest payable thereon, the Tribunal held that as the petitioner company admitted liability for levy of duty and interest thereon in relation to the clandestine clearance of goods, penalty proceedings would be consequential thereto and could not be found fault with.

Ms. Sundari R. Pisupati, learned counsel for the respondent authority, would inform this Court that the petitioner company never had any grievance with regard to the levy of duty and interest thereon but was only interested in contesting the imposition of penalty.

The petitioner company did not choose to file an affidavit of Sri B.V.Kumar, learned counsel, affirming that he was not instructed to make the concession as recorded in the order passed in the appeal. It also did not choose to make any complaint to the Bar Council with regard to the conduct of the said counsel if he made such a concession without authorization. Further, as rightly pointed out by the Tribunal, once the petitioner company accepted the demand of duty and interest thereon consequential upon the finding against it as to clandestine clearance of goods, imposition of penalty is inevitable. We are therefore of the opinion that the petitioner company has not made out any grounds to interfere with the dismissal of either the appeal or the restoration application, be it on facts or in law.

The writ petition is devoid of merit and is accordingly dismissed.

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

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SANJAY KUMAR, J

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T.AMARNATH GOUD, J

Dt: 10.07.2018.
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