HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

I.T.T.A.No.146 of 2018

Judgment: (per V.Ramasubramanian, J.)

As against the order of the Income Tax Appellate Tribunal imposing a condition for the grant of stay pending an appeal, the assessee has come up with the above appeal under Section 260A of the Income Tax Act, 1961.

2. Heard Mr. S.Ravi, learned Senior Counsel appearing for the appellant. Ms. K.Mamata, learned Standing Counsel, takes notice for the respondent.

3. Aggrieved by an order of assessment passed under Section 143(3) on 11-02-2014, the appellant filed an appeal before the Commissioner of Income Tax (Appeals). By an order dated 07-7-2017, the CIT (Appeals) confirmed the order of assessment. Challenging the said order, the appellant has filed an appeal in I.T.A.No.1753/Hyd/2017. It must be pointed out at this stage that two assessment years were involved viz., Assessment Year 2010-11 and Assessment Year 2011-12. The present appeal is confined to the second appeal in I.T.A.No.1753/Hyd/2017 relating to the Assessment Year 2011-12.

4. Along with the appeal I.T.A.No.1753/Hyd/2017, the appellant filed an application for stay of collection of disputed tax in S.A.No.92/Hyd/2018. On this application, the Tribunal passed an order on 19-3-2018 granting stay of demand for

90 days, subject to payment of 10% of the outstanding demand on or before 26th March, 2018. It is against this condition that the appellant has come up with the above appeal.

5. Generally, an order passed on a stay application, imposing a condition for the grant of stay, is actually a discretionary order. It is true that such discretion is to be exercised on the basis of well defined parameters such as *prima facie* case, hardship etc. But still churning out substantial questions of law out of these orders, as a matter of routine, may not be permissible.

6. In the case on hand, Mr. S.Ravi, learned Senior Counsel appearing for the appellant, contended that the payment of 23% of the original demand, has not been taken note of by the Tribunal while imposing the condition to pay 10% of the outstanding demand. In addition, it is the contention of the learned Senior Counsel that the imports were treated as exports in relation to duty drawback under Section 28(iiic) of the Income Tax Act which is clearly erroneous. According to the learned Senior Counsel, the amount of duty drawback added by the Assessing Officer was to the tune of nearly Rs.119.56 Crores and that if this goes, the amount already paid by the assessee would be more than the amount of disputed tax payable by the appellant. Therefore, it is his contention that these aspects have not been taken into account by the Tribunal.

7. It may be true that the impugned order does not actually disclose the payment of 23% of the original demand by the appellant. But the manner in which paragraph-3 of the impugned order proceeds goes to show that what has been ordered to be paid is actually 10% of the outstanding demand. The Tribunal did not use the word 10% of the original demand. Therefore, probably the payment of 23% had actually worked in the mind of the Tribunal though not expressed in so many words. Insofar as the aspect of the duty drawback is concerned, it is a question of law that can be argued before the Tribunal.

8. Considering the fact that the Tribunal has exercised discretion to grant a stay upon payment of 10%, we do not think that it is a fit case for entertaining the above appeal on this question of law. Hence, the appeal is dismissed.

9. However, since the time for payment has already expired on 26-3-2018, the petitioner is granted a time of 4 (four) weeks from the date of receipt of a copy of this order. The applications, if any, pending in this appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

10th April, 2018.
Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

I.T.T.A.No.146 of 2018
(per VRS, J.)

10th April, 2018.
(Ak)