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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 31 of 2018

(Arising out of order dated 05.01.2018 passed in MO/50007/2018-CU[DB] by the Customs, Excise, Service Tax Appellate Tribunal, Principal Bench, New Delhi)

- The Principal Commissioner C. C. E. Raipur, Central Excise Building, Dhamtari Road, Tikrapara, Raipur, Chhattisgarh.

---- Appellant

Versus

- M/s Kailash Enterprises M/s Kailash Enterprises, Near Hanuman Mandir, Nandini Road, Power House Bhilai, Chhattisgarh

---- Respondent

For Appellant	:	Shri Maneesh Sharma, Advocate
For Respondent	:	Shri Raghvendra Pradhan, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

25.06.2019

1. The appeal has been preferred by the Principal Commissioner, Central Excise & Customs, Central Tax, Raipur challenging the correctness and sustainability of the order dated 05.01.2018 in MO/50007/2018-CU[DB] passed by the Customs, Excise, Service Tax Appellate Tribunal (for short, 'the Tribunal'), Principal Bench, New Delhi, virtually restoring the appeal based on a belated pre-deposit of Rs.27 lakhs already ordered as a condition of granting the order of stay. The appeal, obviously, is preferred under Section 35-G (1) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act').

2. Heard the learned standing counsel appearing for the Appellant and the learned counsel for the Respondent as well.

3. The sequence of events reveals that, after issuing the show-cause notice dated 18.10.2011, the taxation proceedings were pursued and finalized. Later, the matter ended up before the Tribunal at the instance of the Assessee. The matter

was considered and an interim order of stay was passed by the Tribunal on 09.12.2014, directing the Appellant/Assessee to a pre-deposit of Rs.27 lakhs. The condition imposed by the Tribunal was not complied with and this was taken note of by the Tribunal when the matter came up for hearing on 05.03.2015 by virtue of which, the appeal came to be dismissed. It is stated that the Appellant/Assessee had preferred further proceedings before this Court, which however did not yield any positive result. It is further discernible from the proceedings, that the Review Petition No. 39 of 2017 also ended up in dismissal, which made the Assessee to approach the Apex Court by filing SLP Nos. 17304-17305/2017. After considering the matter, leave was declined and the SLP came to be dismissed as per the order dated 21.07.2017 passed by the Apex Court.

4. It was thereafter, that the Assessee approached the Tribunal again, by moving an application, stating that the condition as to the pre-deposit of Rs. 27 lakhs has already been satisfied, also producing the challan; in turn seeking to have the matter considered on merits. This was taken up by the Tribunal on 05.01.2018, when it was recorded that the Ld. Representative of the Department had appeared and expressed that the Department was having no objection, who further confirmed that an amount of Rs. 27 lakhs had already been satisfied. This was recorded and in the said circumstance, the Tribunal recalled the earlier order and admitted the appeal, listing the matter for final hearing on 10.01.2018. What transpired, thereafter is not brought on record.

5. The challenge now raised by the Department before this Court in this appeal is that, it was never open for the Tribunal to have re-opened the matter, as the issue had already become final by virtue of the dismissal of the appeal for

non-satisfaction of the pre-deposit which ultimately was considered by this Court and also by the Apex Court, wherein interference was declined.

6. As mentioned already, there is a specific observation in 'paragraph 3' of the order under challenge, which is to the following effect :

> "3. The Ltd. Representative of the Department has no objection. He has confirmed that the amount of Rs. 27 Lakhs has been deposited."

7. The Tribunal passed the order, recalling the earlier order, obviously on the basis of the consent expressed from the part of the Department, through the Ld. Representative by name Shri Ratnesh Kumar Mishra, whose particulars have been given in the cause title. But, there is a case for the appellant to the effect that the said officer was never representing the Department before the Tribunal in the said proceeding and that he was appearing only in matters other than Service Tax matters. This fact is stated in Annexure-A/8 representation dated 07.03.2018 preferred before the President of the Tribunal, through proper channel and it is in the said circumstances, that interference is sought for.

8. Going by the undisputed facts, it is seen that the pre-deposit of Rs. 27 lakhs was ordered by the Tribunal as a condition to give the benefit of stay during the pendency of the appeal. Since the said amount was not satisfied, the appeal came to be dismissed for default. The course pursued by the Tribunal in the said circumstances came to be affirmed by virtue of the interference declined by this Court, followed by the dismissal of SLP. Though there is no question of any merger of the verdicts, on dismissal of the SLP, it is evident that the merit of the case was never looked into or decided by the Tribunal. It is also a fact that the Assessee has sought to deposit the

amount, when the challenge against imposing such condition became final, to have the matter heard on merits. It was the said petition, which was considered by the Tribunal on 05.01.2018, which was stated as not opposed by the Department, as put forth by the departmental representative, pointing out that the deposit had been effected and that there is no objection.

9. Now, a 'U-turn' is sought to taken by the Department, stating that the officer concerned i.e. the Ld. Representative by name Shri Ratnesh Kumar Mishra had not appeared before the Tribunal. We find it difficult to accept the said proposition. The material sought to be relied on by the Department is only the representation stated as preferred by the said officer (authorised representative) vide its proceedings No. Court Cases/Misc./RKM/2018/2380 dated '06.03.2018', as typed on the right hand top portion of the said proceeding; copy of which is annexed as Annexure-A/8. When he says that he had not appeared before the Tribunal and his name had been wrongly shown, which required to be deleted, it is also relevant to note that date of the said proceedings has been sought to be corrected manually as '07.03.2018' at the bottom, which originally was typed as '07.01.2018' i.e. immediately after passing the order by the Tribunal on 05.01.2018. In the endorsement made by the authorities concerned, towards the bottom at the right hand, it is mentioned that an office copy was served on '07.01.2018'. It may have to be enquired as to the circumstances under which such manual correction came to be made; if found appropriate. We are not expressing any opinion in this regard, while considering the maintainability of this appeal. Since it is stated that the Appellant has already moved the Tribunal with reference to Annexure-A/8, it is for the Appellant to pursue further steps before the Tribunal. Unless and until the observation made by the Tribunal in

'paragraph 3' of the order under challenge is caused to be deleted, the appeal is not liable to entertained.

10. The appeal fails. It is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge

Chandra