IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2022

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE C. SARAVANAN

C.M.A. Nos. 1949 & 1950 of 2022

M/s. Shree Vijayalakshmi Charitable Trust,
107-A, Senguptha Street,
Ram Nagar, Coimbatore – 641 018. ..Appellant in both appeals

Vs.

The Commissioner of G.S.T. & Central Excise,
Coimbatore Comissionerate,
6/7, ATD Street,
Race Course, Coimbatore – 641 018. ..Respondent in both appeals

Prayer in C.M.A. No. 1949 of 2022: Civil Miscellaneous Appeal to set aside the impugned Defect Misc. Order No. 40003 of 2020 dated 28.01.2020 passed by Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai and thereby direct to admit the appeal treating the amount of Rs. 5,03,46,842/- as pre-deposit and pass final orders on merits, by granting 6 months time to make pre-deposit of Rs.3,80,64,511/- (being 7.5% of Rs.50,75,26,810) and thereby directing the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai.

Prayer in C.M.A. No. 1950 of 2022: Civil Miscellaneous Appeal to set aside the impugned Defect Misc. Order No. 40004 of 2020 dated 28.01.2020 passed by Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai and thereby direct to admit the appeal treating the amount of Rs. 5,03,46,842/- as pre-deposit and pass final orders on merits, by granting 6 months time to make pre-deposit of Rs.3,80,64,511/- (being 7.5% of Rs.50,75,26,810) and thereby directing the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai.

For Appellant in both appeals	::	Mr.T. Ramesh
For Respondent in both appeals	::	Mr. Rajendran Raghavan Senior Panel Counsel

JUDGMENT

S. VAIDYANATHAN,J.

AND

C. SARAVANAN,J.

The appellant has filed these appeals against the impugned Defect Misc. Order Nos. 40003 & 40004 of 2020 dated 28.01.2020 passed by Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai and thereby direct to admit the respective appeals treating the amount of Rs. 5,03,46,842/- as pre-deposit and pass final orders on merits, by granting 6 months time to make pre-deposit of Rs.3,80,64,511/- (being 7.5% of Rs.50,75,26,810).

2. The relevant portion of the order passed by CESTAT reads as under:

> *"Shri R. Parthasarathy, Ld. Advocate Appearing for the assessee, submits that despite three opportunities the pre-deposit is not paid and moreover, the assessee has already opted for the benefit of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 by filing the required applications under the said scheme."*

3. The case of the appellant is that it is a Public Charitable Trust

duly created under Registered Deed of Trust dated 09.09.1992 under Doc. No. 742/1992. By virtue of gift deeds dated 27.10.2010, the appellant became owner of two portions of land admeasuring an extent of 22.68 acres and 14.86 acres. The appellant leased out the said lands vide agreements dated 11.02.2010 and 19.07.2010 to one Shri M. Palanisamy for mining activity for a period of 5 years.

4. It is the case of the appellant that since the lands also contained valuable resources namely Blue Metal and Mineral Sand, the appellant entered into agreements with the lessee for sharing the revenue realised from mining the above metals. The appellant was centrally registered under the erstwhile Service Tax regime and wherever applicable, the appellant discharged Service Tax at the applicable rates. The Department issued two show cause notices dated 08.08.2014 and 27.03.2015 which culminated in Order in Original Nos. 06-07/2018 dated 25.06.2019 passed by the respondent. Aggrieved by the same, the appellant filed statutory appeals before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai. It is submitted that the appellant had opted settlement under the

provisions of SVLDRS, 2019. However, the appellant was unable to pay the amount as quantified under the aforesaid scheme. It is further submitted that during the pendency of the Departmental proceedings, the respondent attached the property of the appellant and recovered an amount from the tenants and thereby a sum of Rs.5,03,46,862/- was recovered.

5. It is submitted that against the order dated 25.06.2019 passed by the respondent Commissioner, the appellant was required to pre-deposit only a sum of Rs.3,90,64,511/- out of Rs.50,75,26,810/- at 7.5% in terms of Section 35F of Central Excise Act, 1944 as a condition for filing appeal. It is stated that the appellant cannot be asked to pre-deposit further amount and denied the right to appeal as more than 7.5% of the disputed tax amount has been recovered.

6. On the other hand, the learned counsel appearing for the respondent submitted that the appellant not only approached the Department under the Voluntary Disclosure Scheme in the year 2013 but also SVLDRS 2019 but delayed the payment. It is further submitted that merely because

Department has recovered the aforesaid sum, the appellant cannot ask for admission of appeals without mandatory pre-deposit.

7. We have considered the arguments advanced by the learned counsel for the petitioner as well as the learned Standing Counsel for the respondent.

8. We are of the view that the appellant cannot be denied of being heard on merits in an appeal as more than 7.5% of the amount required for pre-deposit has been recovered by the Department from the petitioner's clients. The amount has to be treated as pre-deposit for the purpose of Section 35 F of the Central Excise Act, 1944 as made applicable to appeals against order passed under the Finance Act, 1994. Hence, the appeals are allowed. No costs.

9. The CESTAT Registry is therefore directed to number the respective appeals and list the appeals for final disposal before the Bench on its turn. CESTAT may endeavour to take up the appeals and dispose of the

same on merits as expeditiously as possible, preferably within a period of 12 months from the date of receipt of a copy of this order. We however make it clear that we have not fixed any outer time for the disposal of the appeals considering the number of sittings has drastically reduced for want of quorum.

(S.V.N.J.) (C.S.N.J.)
22.11.2022

nv

To

The Commissioner of G.S.T. & Central Excise,
Coimbatore Comissionerate,
6/7, ATD Street,
Race Course, Coimbatore – 641 018

S. VAIDYANATHAN,J.

AND

C. SARAVANAN,J.

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