(2016) 02 DEL CK 0382

In the Delhi High Court

Case No : SERTA No. 5 of 2016 and CM Nos. 6655 of 2016 (for stay) and 6656 of 2016 (for exemption)

AIREF Engineers Pvt. Ltd. APPELLANT

Vs

Commissioner of Service Tax RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Citation : (2016) 334 ELT 9

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : S/Shri P.K. Sahu and Prashant Shukla, Advocates, for the Appellant; Shri Satish Kumar, Sr. Standing Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

CM No. 6656/2016 (for exemption): Exemption allowed subject to all just exceptions.

2. The application is disposed of.

SERTA 5/2016 & CM No. 6655/2016 (for stay)

3. Notice. Mr. Satish Kumar, learned Senior Standing counsel for the Respondent accepts notice.

4. This appeal is directed against an order dated 22nd December, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal (?CESTAT?) requiring the Appellant to make a pre-deposit of sum of Rs. 3 crores within eight weeks failing which the Appellant?s appeals before the CESTAT shall be dismissed.

5. One of the issues raised in the present petition concerns the applicability of Section 35F of the Central Excise Act, 1944 (?CE Act?) which talks of pre-deposit. This Section was amended vide the Finance Act, 2014 with effect from 6th August, 2014. Pursuant to the amendment, the second proviso thereto makes it clear that Section 35F of the CE Act will not apply to appeals that are pending on

the date of amendment before the CESTAT.

6. As it transpires in the present case, the appeals by the Appellant before the CESTAT were directed against Orders-in-Original dated 30th August, 2013 and 9th October, 2013 passed by the Commissioner, Central Excise. They had been filed along with applications for waiver of pre-deposit. While the appeal and applications were pending, Section 35F of the CE Act, as it stood then, was substituted with effect from 6th August, 2014 by the present Section 35F of the CE Act which mandates pre-deposit of seven and a half percent of the duty.

7. The point urged on behalf of the Appellant is that since there is no saving clause qua the provision as it stood prior to the amendment, there is as of date no provision in the CE Act which mandates pre-deposit in appeals pending before the CESTAT prior to 6th August, 2014.

8. Prima facie it does appear to the Court that in the absence of any saving clause, the Appellant has a statable case on the strength of the decision of the Constitution Bench of the Supreme Court in Kolhapur Canesugar Works Ltd. v. UDI, 2000 (119) E.L.T. 257 (S.C.).

9. Accordingly, this appeal is admitted and the following question of law is framed for determination :

Whether on the facts and in the circumstances of the case, the CESTAT could direct the Appellant to make a pre-deposit under the earlier version of Section 35F of Central Excise Act, 1944, in the appeal filed before 6th August, 2014?

10. Learned counsel for the parties are permitted to file additional documents/ papers which are part of the record before the CESTAT within eight weeks.

11. List for hearing on 17th May, 2016.

12. The Court stays the impugned order dated 22nd December, 2015 passed by the CESTAT and directs that the CESTAT will proceed with hearing of the appeals without insisting on a pre-deposit by the Appellant.

13. Order dasti.