(2014) 03 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 798 of 2014

Atithi Gokul Automobile Works APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Citation : (2015) 315 ELT 410 : (2014) 44 GST 463

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Kamal Trivedi, Paresh M. Dave and Paritosh Gupta, Advocate for the Appellant; Rituraj M. Meena and R.J. Oza, Advocate for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—Heard learned counsel for the parties for final disposal. The petitioners have challenged orders dated 22.8.2013 and 3.12.2013 passed by the Customs, Excise and Service Tax Appellate Tribunal ("the tribunal" for short). Such orders arise out of pre-deposit proceedings. On 22.8.2013, the tribunal proceeded ex-parte against the appellant the petitioner before us. The tribunal noted that on 4.4.2013, adjournment was sought on the ground that the appellant needed to engage an advocate. Matter was thereafter, listed on 27.5.2013 but adjourned to 11.7.2013 when also request for adjournment was made and considered by the Bench. It was lastly kept on 22.8.2013 when also request for adjournment was made on the ground of illness of the representative of the appellant. The tribunal refused to grant any further adjournment and required the appellant to deposit a sum of Rs. 1 crore by way of pre-deposit within a period of 12 weeks from the date of order. The petitioner preferred Misc. Application requesting the tribunal to recall the said order. The tribunal passed order on 3.12.2013 rejecting such an application. Hence this petition.

2. We have not the slightest doubt that having filed the proceeding before the tribunal, the petitioner ought to have pursue the same with all seriousness. Repeated adjournments were neither justified nor can be found and fault with the tribunal in not adjourning the proceedings time and again. Nevertheless, in

facts of the case when it is pointed out to us that at least on the last occasion the reason pressed was sickness of representative of the petitioner and when by an ex parte order, pre-deposit of sizeable amount of Rs. 1 crore came to be imposed, in our opinion, the petitioners deserve one last opportunity to argue the petition for waiver of pre-deposit on merits before the tribunal. This however, cannot be done unconditionally. The petitioner must pay reasonable heavy cost for availing such an opportunity.

3. In facts of the case, therefore, orders dated 2.8.2013 and 3.12.2013 passed by the tribunal are set aside. The proceedings are placed back before the tribunal for consideration on merits and disposal in accordance with law. For such purpose, tentatively we fix the dale of 21.4.2014 before the tribunal. This is only in order to ensure that no fresh notice shall have to be served to the parties of such proceedings. It is made abundantly clear that if on such date the tribunal wishes to reschedule the hearing, it would be absolutely open for the tribunal to do so.

4. The petitioner shall deposit a sum of Rs. 50,000/- with the Gujarat State Legal Services Authority by 31.3.2014. Petition is disposed of.