(2014) 11 MP CK 0171

In the Madhya Pradesh High Court

Case No : CEA No. 35 of 2014

Bharat Sanchar Nigam Ltd. APPELLANT

Vs

Commissioner of C. Ex. and S.T. RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2015) 38 STR 958

Hon'ble Judges : D.K. Paliwal, J;P.K. Jaiswal, J.

Bench : Division Bench

Advocate : Yogesh Mittal, Advocate, for the Appellant; Prasanna Prasad, for the Respondent

Judgement

1. Shri Yogesh Mittal, advocate for the appellant. Shri Prasanna Prasad, advocate for the respondent.

2. Heard.

3. By the Central Excise Appeal, the appellant is praying for setting aside of the order dated 25-8-2014 passed by the Customs Excise & Service Tax Appellate Tribunal, New Delhi in Appeal No. S/ST/3653/2012-CU [DB], whereby the learned Tribunal rejected the application for waiver of pre-deposit and directed the appellant to deposit the service tax amount of Rs. 10,83,505/- along with proportionate interest within four weeks.

4. Learned counsel for the appellant has submitted that the appellant is a company fully owned and controlled by the Government of India and as per their records like S.T.-3 Returns, TR-6 Challans, E-Payments Receipts and other private records for the period May, 2005 to July, 2008, they paid the aforesaid amount and the Authority has wrongly held that the appellant had short paid service tax by an amount equal to Rs. 10,83,505/-.

5. It is prayed that due to financial crunch, the appellant is not in a position to deposit the aforesaid service tax amount and prays that the impugned order be

set aside and the application for waiver of pre-deposit be allowed.

6. On the other hand, learned counsel for the respondent vehemently opposed the prayer and submitted that the provisions make it obligatory on the part of the appellant to make a deposit the amount before the appeal could be heard on merits, but the Appellant Authority has got discretion to grant waiver of pre-deposit or reduce the quantum of such an amount, if the circumstances warrant, or if there is undue hardship; which means an excess hardship or the hardship greater than the circumstances warrant. He submitted that Bharat Sanchar Nigam Limited is running in losses, is not a ground to waive the pre-deposit and submitted that sometime may be granted to the party to deposit the amount.

7. On due consideration of the arguments of the learned counsel for the parties, we are of the view that no material has been produced about the financial crunch or undue hardship, but considering the fact, that the appellant is a Government Company, we direct the appellant to deposit 50% of the service tax amount in question along with proportionate interest within four weeks from today; failing which the appeal shall dismissed for failure of pre-deposit. If compliance of the order passed by this Court is made, the recovery of the penalty is stayed, as per para 4 of the impugned order. With the aforesaid modification, this Central Excise Appeal is allowed in part without any order as to costs.

