(2017) 11 DEL CK 0201

In the Delhi High Court

Case No : Civil Writ Petition No. 8210 Of 2017, Civil Miscellaneous Application No. 33748 Of 2017

EBIZ.Com Pvt.Ltd & Ors APPELLANT

Vs

Central Excise, Customs And Service Tax Appellate Tribunal, Delhi (CESTAT & Anr.) RESPONDENT

Date of Decision : 24-11-2017

Acts Referred:

Citation : (2017) 11 DEL CK 0201

Hon'ble Judges : Sanjiv Khanna, J;Prathiba M. Singh, J

Bench : Division Bench

Advocate : J.K. Mittal, Rajvir Singh, Nikhil Kumar, Kirtiman Singh, Waize Ali Noor, Prateek Dhanda, Momin Khan, Mohinder Singh, Satish Aggarwala, Vineet Sharma

Final Decision : Disposed Of

Judgement

Sanjiv Khanna, J

1. The grievance of the petitioners is that the appeal filed by them before the Customs, Excise & Service Tax Appellate Tribunal (â??CESTATâ??)

was not being registered and listed for hearing. The court, while issuing notice in the present writ petition on 15th September, 2017, had sought

response from the CESTAT on the following two questions:

â??(a) On what basis is an issue concerning the jurisdiction of the CESTAT to entertain an appeal on the judicial side being referred by the

Bench of the CESTAT to the President of the CESTAT on the administrative side?

(b) On what basis were notices issued by the CESTAT Registry to the Petitioners herein (who have filed separate appeals before the

CESTAT) â??with regard to maintainability of the appeal in absence of mandatory depositâ? when the Petitioners assert that the sums

already deposited by them with the Department is in excess of 7.5% of the demanded sum?

2. Respondent no.1- CESTAT, has filed an affidavit through its Registrar. It is stated by the respondent that the matter was listed on the judicial side,

when the two membersâ?? Bench had referred the matter to the President on the question of jurisdiction.

3. The explanation is also being given in view of the order passed by the Allahabad High Court dated 20th August, 2015, a copy of which has been

enclosed as â??Annexure-Bâ??.

4. The second issue relates to pre-deposit. On the said aspect, it is stated in the affidavit that the aforesaid noting was issued inadvertently by the

Registry of the Tribunal. A prayer is made that the said mistake may be condoned.

5. Anxiety of the petitioners for hearing and disposal of their appeal expeditiously can be understood especially when the pre-deposits made are

substantial. There would be other similarly situated assesses. It is obvious that the appeals should be listed on the judicial side, even if, there is an issue

or debate with regard to the territorial jurisdiction of the Tribunal. Such matters cannot be decided on the Administrative side, by the Registry of the

CESTAT, even when it is of the opinion that the appellants have not approached the right or correct Bench of the Tribunal having territorial

jurisdiction.

6. Counsel for the petitioner has submitted that on four occasions, applications were made for inspection of files and on one pretext or another, the

inspection of the file was not granted. The issue is to be resolved on the administrative side. Adequate mechanism should be there to deal with such

complaints.

7. Mr. Mittal, during the course of hearing has accepted and stated that practice directions have been issued with regard to the removal of objections

by the Registry, listing of matters, inspection, furnishing of certified copies etc. Mr. Mittal states that these directions are not being complied with. This

aspect would also be examined and appropriate administrative orders can be issued.

8. The appeals filed by the petitioners, which is still awaiting registration in the

Registry of the Tribunal would be registered as per Rules, for hearing,

within two weeks from today and the date of hearing would be communicated to the learned counsel for the petitioners.

9. The present writ petition is disposed of in the above terms.