
(2013) 03 KAR CK 0083

In the Karnataka High Court

Case No : Writ Petition No. 2214 of 2013 (T-TAR) and Writ Petition No's. 3298-3299 and 3703-3711 of 2013 (T-TAR)

Metlife India Insurance Co. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2013) 290 ELT 362 : (2013) 30 STR 234 : (2013) 39 STT 624

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K.P. Kumar for King and Partridge, for the Appellant; N.R. Bhaskar, CGSC, for the Respondent

Judgement

Ram Mohan Reddy, J.—Common questions of law and that of fact arise for decision making, hence with the consent of learned counsel for the parties, these petitions are clubbed together, finally heard and are disposed of by this common order. It is not in dispute that the petitioners have preferred appeals, together with applications for stay are pending before the Commissioner of Appeals as well as CESTAT. That the non-consideration of the applications for interim stay are admittedly not for any reasons attributable to the appellants/petitioners herein and if that is so, then the Circular, dated 1st January 2013 mandating the initiation of recovery proceedings thirty days after filing of the appeal calls for interference.

2. Learned counsel for the parties submit that, in identical circumstances, when the very same circular came up for consideration before the High Court of Bombay in Larsen and Toubro Limited Vs. The Union of India and Others, it was observed thus:

For these reasons, we have come to the conclusion that the provisions contained in the impugned Circular, dated 1 January 2013 mandating the initiation of recovery proceedings thirty days after the filing of an appeal, if no stay is granted, cannot be applied to an assessee who has filed an application for stay,

which has remained pending for reasons beyond the control of the assessee. Where, however, an application for stay has remained pending for more than a reasonable period, for reasons having a bearing on the default or the improper conduct of an assessee, recovery proceedings can well be initiated as explained in the earlier part of the judgment,

3. Learned counsel for the parties jointly submit that these petitions be disposed of in like terms as noticed supra.

4. Learned Central Government Standing Counsel submits that if appeals and interlocutory applications are not heard by the Commissioner-appellate authority and CESTAT, the Union of India will suffer loss of revenue and therefore, a direction be issued to them for disposal of the appeals at the earliest or pass orders on the interlocutory applications for stay.

5. There is, some force in the submission of the learned Central Government Standing Counsel. But, then, there could be various justifiable reasons for the statutory appellate authorities from not taking up for hearing and passing orders on I.As., or the hearing of the appeals so as to dispose them off within a time frame even if this Court were to direct doing so.

6. Sri K.P. Kumar, learned senior counsel for the petitioners submits that, there is large pendency of appeals for hearing before the authorities and there being only one Bench of CESTAT, at Bangalore, with territorial jurisdiction over three southern States, no useful purpose would be served by directing consideration of applications for stay at this distance of time.

7. Be that as it may, when the petitioners are not the cause for statutory appellate authorities to hear and pass orders on interlocutory stay applications, petitioners cannot be found fault with. In the circumstances, all that can be said is that the Union of India must refrain from initiating recovery proceedings against the petitioners in respect of the amounts due in terms of the order impugned in the appeal until final orders in the appeal or order on interlocutory application for stay. It is hoped that the appellate authority would consider hearing I.As., for stay and dispose of the same as early as possible.

8. I am compelled to observe so, regard being had to the fact that the Union of India has failed to set up large number of Tribunals such as CESTAT and if this is done, then there would be no cause for complaint over the non-consideration of the applications for stay, in appeals, by only one Tribunal, presently functioning at Bangalore. This should be an eye opener for Union of India to establish and constitute any number of Tribunals in all the States in the Country. Petitions are accordingly ordered.