(2013) 02 BOM CK 0176

In the Bombay High Court

Case No : Writ Petition No. 1470 of 2013

Patel Engineering Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Citation : (2014) 24 GSTR 429

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Prakash Shah, Jas Sanghavi and Uchit Sheth instructed by PDS Legal, for the Appellant; Shuchitra Kamble, for the Respondent

Judgement

1. The grievance of the petitioner is that though an appeal has been filed before the Commissioner of Central Excise (Appeals) against an order of adjudication and even the stay application was pending, the Revenue proceeded to recover the entire amount by attaching the bank account towards demand on account of service tax and penalty. This action was purportedly taken in pursuance of a circular dated January 1, 2013 of the Central Board of Excise and Customs. The circular has been considered and has been dealt with in a judgment of this court in Larsen and Toubro Limited Vs. The Union of India and Others, (Writ Petition No. 878 of 2013 and connected petitions decided on February 1, 2013). In paragraph 17 of the judgment, this court has held as follows (page 568):

For these reasons, we have come to the conclusion that the provisions contained in the impugned circular dated January 1, 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.

2. The law laid by the court on the interpretation of the circular of the Central Board of Excise and Customs would bind all authorities who are subject to the jurisdiction of this court. In this case, we are of the view that there was absolutely no reason or justification on the part of the appellate authority to keep the stay application pending and take recourse to coercive remedies under the law. Since the amount has now been withdrawn, we decline to accede to the request of the advocate of the petitioner in the facts of this case that the Revenue should be directed to bring back the amount. Instead, we consider it appropriate having regard to the ends of justice to direct that the appeal which has been filed by the petitioner, shall be disposed of expeditiously by the Commissioner of Central Excise (Appeals) within a period of four weeks of the date on which an authenticated copy of this order is produced on the record. We, however, direct that henceforth the controlling authority shall issue a circular to all the authorities within his jurisdiction that the directions contained in the judgment of this court in Larsen and Toubro Ltd. [2013] 18 GSTR 554 (Bom) shall be duly observed. The petition is accordingly disposed of. There shall be no order as to costs.