(2014) 12 AP CK 0129

In the Andhra Pradesh High Court

Case No : Central Excise Appeal No. 128 of 2014

Ramadasu Narasinga Rao APPELLANT

Vs

Commissioner of Central Excise, Customs and Service Tax RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Citation : (2014) 12 AP CK 0129

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J;Sanjay Kumar, J

Bench : Division Bench

Advocate : N.P. Anjana Dev, Advocates for the Appellant; V. Gopalakrishna Gokhaley, Advocates for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—This appeal is admitted on the following substantial question of law.

2. Whether the learned Tribunal is justified to pass any order of pre-deposit although no such application was made before it.

3. The learned Standing counsel for the Revenue is present in the Court and he takes notice of this appeal.

4. Having regard to the nature of the matter and the question formulated by us, we do not think that observance of all formalities for final hearing of this matter is required. This appeal is directed against the order of the learned Tribunal dated 10.09.2014, whereby it in exercise of its jurisdiction has passed an order asking the appellant before us to deposit the tax component as well as the interest one keeping the appeal pending for hearing.

5. It is appropriate to record that no application for waiver of pre-deposit was made. It appears from the findings of the learned Tribunal that no one appeared for the appellant on the day when the impugned order was passed. It is noted that a letter was communicated to the registry of the learned Tribunal by the appellant himself stating that he was unwell and therefore an adjournment

should be granted.

6. In our considered view the learned Tribunal should have considered the said request in either way. The learned Tribunal thought that it was not an application for adjournment made lawfully and that could be done only by a lawyer engaged. We record our disagreement with this approach of the learned Tribunal. Learned counsel is nothing but a recognized agent and the application for adjournment is always made by the litigant not the lawyer. Whether ground for adjournment is tenable or not is another aspect of the matter. We think that the learned Tribunal should have considered this request though not made through the lawyer.

7. According to us, it was the duty of the learned lawyer to appear before the learned Tribunal or if for any reason he does not appear, it is his primary duty to inform the Court or the Tribunal concerned as to his inability to appear and ask it to disengage from the matter. We think that it was the apparent lapse on the part of the learned lawyer, whether deliberate or in deliberate is not know to us. The learned Tribunal should have taken note of this fact. Unfortunately, it was not considered. Then, we notice that the learned Tribunal without having any application or prayer for waiver of pre-deposit, passed the impugned order. According to us, such an order is without jurisdiction. Unless a prayer is made, the learned Tribunal cannot pass a suo motu order and at the most it could have dismissed the appeal for default although it has power to pass appropriate order if the facts and circumstances of the case so warranted.

8. In this case, the learned Tribunal has recorded the version of the Revenue and decided that order of entire amount of pre-deposit and interest should be passed. As we have already recorded that this order is without jurisdiction when there is no such prayer or grievance is made. The learned Tribunal virtually passed order of recovery of tax and interest without having any recovery proceedings.

9. However, taking note of the aforesaid situation and the submission of the learned counsel for the appellant that the appellant will make a suitable application or applications, we set aside the impugned order.

10. It would be open for the appellant to make suitable application or applications as may be advised within seven days from the date of receipt of a copy of this order.

11. The appeal is accordingly allowed.

12. However, it is made clear that in the event no application is made within the time stipulated above then this issue will be a closed chapter and the appeal before the learned Tribunal would be deemed to have been dismissed for default. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

