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(2013) 01 CAL CK 0052

In the Calcutta High Court

Case No : Writ Petition No. 17 of 2013

Stewarts and Lloyds of India Limited — APPELLANT

Vs

CESTAT — RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 294 ELT 25

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Samir Chakraborty, Abhijt Biswas and R. Bharadwaj, for the Appellant;

Judgement

Indira Banerjee, J.—This writ application has been filed challenging an Order No. S/1291/Kol/2012, dated 11-10-2012 of the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata, whereby the learned Tribunal disposed of the Stay Petition of the petitioner being SP-634 of 2010 in the Appeal being S.T. Appeal No. 275 of 2010 filed by the petitioner. It is not in dispute that notices of the date of hearing had been issued. The petitioner, however, submits that the only person conversant with matters pertaining to taxation who had been looking after all taxation cases of the petitioner company including service tax cases fell ill, as a result of which, there was some chaos and confusion in the petitioner company.

2. The learned Tribunal by its impugned order decided the stay application on its merits in the absence of the petitioner, inter alia, observing that the applicants, that is, the writ petitioners had not produced copies of contract and invoices involved in the case and that there was no evidence of financial hardship.

3. It is well settled by judicial pronouncements that financial hardship is not the only criteria for dispensation of the requirement of pre-deposit. Undue hardship is not financial hardship alone, even though undue hardship would certainly include acute financial hardship.

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4. It is well settled that if an assessee has a good case in appeal, pre-deposit should be dispensed with. In the instant case, the learned Tribunal has apparently not taken the prima facie merits of the case of the petitioner into consideration. The observation of the learned Tribunal that the balance of convenience was against the writ petitioner, is unsupported by reasons. The order of adjudication against which the appeal had been filed itself recorded that a summary statement providing the names of the parties, bill details and the amount received from the parties towards erection services, supply of materials and civil works for the period 2003-04 and up to 10th September, 2004 in respect of which no Service Tax had been charged, together with sample contracts and sample copies of bills were enclosed with the notes on submission filed on behalf of the writ petitioner. These materials were obviously on record before the learned Tribunal and the learned Tribunal might have looked into the same.

5. Without going into the question of whether the order ought to have been passed ex parte, the ex parte order is set aside without prejudice to the rights and contentions of the respective parties. The learned Tribunal is directed to decide the application afresh in accordance with law after giving the petitioner and the department reasonable opportunity of hearing as expeditiously as possible and preferably within two weeks from the date of communication of this order. The learned Tribunal shall also dispose of the appeal expeditiously.

6. The writ application is disposed of.

7. Affidavits not having been called for, the allegations in the writ petitioner shall be deemed not to have been admitted. Urgent certified copy of this order be supplied to the parties, if applied for, upon compliance of all requisite formalities.

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