

Coromandel Granite Company Ltd. Vs Cestat, Chennai

Court: Madras High Court

Date of Decision: March 11, 2010

Citation: (2011) 271 ELT 187

Hon'ble Judges: Chitra Venkataraman, J

Bench: Single Bench

Advocate: S. Murugappan, for the Appellant; S. Udhayakumar, SCGSC, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Chitra Venkataraman, J.

Mr. S. Udhayakumar, learned Senior Central Government Standing Counsel takes notice for the respondents.

2. The petition is filed against the order of the Tribunal rejecting the prayer for waiver of pre-deposit condition for maintainability of the appeal.

3. The Tribunal considered the case of the petitioner and held that the petitioner had failed to make prima facie case for waiver of pre-deposit of

entire amount of duty and penalty. After considering the facts and circumstances of that case, the Tribunal directed the petitioner to deposit a sum

of Rs. 30 lakhs within six weeks. Upon deposit of the said amount, pre-deposit of the balance amounts of duty and penalty shall stand waived and

recovery thereof stayed till final disposal of the appeal.

4. The petitioner moved modification application before the Tribunal contending that the Tribunal had failed to consider the Coordinate Benches

decision relied on for the purpose of considering prima facie case made out by the petitioner. The Tribunal passed an order in Miscellaneous

Petition on 18-12-2009 rejecting the prayer of the petitioner for modification. In the circumstances, the Tribunal directed the petitioner to pay the

said amount by extending the time by 8 weeks and directed to report compliance of the same on 15-3-2010. Aggrieved of the same, present writ

petition has been filed.

5. Learned counsel for the petitioner submitted that the Tribunal failed to consider the decision of the Coordinate Benches decision, which is relied

on by the petitioner for the purpose of prima facie case made out by him. The Tribunal erred in directing the petitioner to deposit the sum of Rs. 30

lakhs.

6. A perusal of the affidavit, and the documents filed before this Court, shows that as against the demand of duty of Rs. 4,76,36,099/- [Rs.

3,86,36,099/-(demand of duty) plus Rs. 90,00,000/- (penalty)], the petitioner was directed to deposit a sum of Rs. 30 lakhs. The order of waiver

of pre-deposit is a pure and simple question of discretion which the Tribunal has to exercise on prima facie case made out by the petitioner.

7. Learned counsel for the petitioner submits that the Tribunal had not cared to refer even a decision cited by the petitioner which would amply

demonstrate that the issue in question is covered by the decision of the Tribunal.

8. Without going into the merits on the aspect as to whether the Coordinate Bench's decision will apply to the case on hand to conclude in favour

of the petitioner, having regard to the fact that Tribunal had considered the merits of the case and that mere absence of reference to the decision of

the Coordinate Bench per se does not mean that the Tribunal had not considered the contention of the petitioner. I do not find any justification in

interfering with the order passed by the Tribunal. However, having regard to the fact that the petitioner has come out of BIFR proceedings recently

and in view of the financial constraints that the petitioner is facing, as against the sum of Rs. 30 lakhs, the petitioner is hereby directed to deposit a

sum of Rs. 10 lakhs within a period of six weeks from today. On such payment, there shall be stay of pre-deposit of the balance amount of duty

and penalty and recovery thereof staved pending the appeal. The Tribunal is directed to dispose of the appeal expeditiously.

9. With the above observation, the writ petition is disposed of. No costs. Consequently, connected MPs are closed