

Logos Constructions Pvt. Ltd. Vs CESTAT

Court: Madras High Court

Date of Decision: Nov. 6, 2012

Citation: (2013) 291 ELT 185

Hon'ble Judges: R. Karupiah, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: C. Natarajan for S. Senthilnathan, for the Appellant; K. Ravi Anantha Padmanaban, for the Respondent

Final Decision: Dismissed

Judgement

Chitra Venkataraman, J.

The assessee is on appeal as against the order of the Customs, Excise and Service Tax Appellate Tribunal,

rejecting the appeal on the ground that the assessee had not complied with the directions of this Court dated 19-12-2011 in W.P. No. 29001 of

2011, whereby this Court confirmed the order of the Tribunal directing the assessee to pay a pre-deposit of Rs. 1 Crore on or before 30-1-2012.

The Tribunal pointed out that since the assessee had not complied with the order of this Court, the appeal was liable to be dismissed for non-

compliance of the provisions of Section 35 of the Central Excise Act, Aggrieved by this the present appeal. Learned Senior Counsel for the

appellant pointed out that after the dismissal of the writ petition, the assessee moved the Tribunal for modification of its order passed on the

condition of pre-deposit, which was the subject matter of an order before this Court in the writ proceedings. The assessee stated that it had

already paid a sum of Rs. 1,41,60,954/- (CENVAT Rs. 74,54,584/- and cash Rs. 67,06,370/-) for the period from 1-6-2007 to 30-9-2008.

Apart from that, the assessee paid Rs. 15,71,887/- in cash. Thus, totally a sum of Rs. 1,57,32,841/- was paid by the assessee. The said facts

were not brought on record in the stay application filed before the Tribunal.

2. On the other hand, the Tribunal indicated that the assessee paid only Rs. 82,78,258/-. Based on the said statement, the Tribunal directed the

assessee to deposit a further sum of Rs. 1 Crore. Since the appellant had already paid a sum of Rs. 1,57,32,841/-, the assessee prayed that the

additional payment of Rs. 74,54,583/- be taken on record, so that the assessee might be permitted to make further payment of Rs. 25,45,417/-,

which was available in the CENVAT account. The Tribunal pointed out that since the order had already been passed by this Court confirming the

order of the Tribunal, the question of relaxing the condition and thereby taking up the appeal did not arise.

3. Learned Senior Counsel appearing for the assessee submits that when the Rules permit such adjustment of CENVAT credit, the Tribunal is not

justified in rejecting the application for modification. In any event according to the assessee, it had fully complied with the order on 13th February,

2012. The petition filed by the assessee for extension of time for complying with the condition of additional deposit ought to have been considered

in proper perspective. In such circumstances, learned Senior Counsel for the assessee submits that the order of the Tribunal suffers a serious error.

4. Countering the claim of the assessee, the learned Standing Counsel pointed out that when the assessee had not complied with the order of this

Court in letter and spirit, it cannot seek a modification of the order before the Tribunal. In such circumstances, the question of adjustment of

CENVAT credit towards the satisfaction of the condition on pre-deposit does not arise.

5. Considering all the submissions of the learned Senior Counsel as regards the compliance of the order on 14-2-2012, since the said fact has not

been taken note of by the Tribunal, the proper course herein would be to set aside the order of the Tribunal and restore the appeal back to the files

of the Tribunal for it to consider the claim of the appellant afresh and pass an appropriate order therein to the actual compliance of the order of this

Court. In such circumstances, the civil miscellaneous appeal is disposed of and the appeal is restored to the files of CESTAT to pass appropriate

orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the above MP is closed.