IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Service Tax Miscellaneous Application (COD) No.77345,77347 of 2019
in
Service Tax Appeal Nos.77364,77365 of 2019

(Arising out of Order-in-Original Nos.Commr./BBSR-ST/17/2018 dated 28.03.2018 & Commr./BBSR-ST/19/2018 dated 28.03.2018 both passed by Commr. of CGST & Excise, Bhubaneswar)

M/s Arss Infrastructure Projects Ltd.
Plot No.38, Sector A,Zone-D, Mancheswar Industrial Estate, Bhubaneswar-751010
Appellant

VERSUS

CGST & Excise, Bhubaneswar
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007
Respondent

Appearance:

Shri K.K.Acharya, Advocate for the Appellant
Shri T.Mondal, A.R. for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

DATE OF HEARING : 14.01.2020

MISCELLANEOUS ORDER NO.75031-75032/2020

ORDER

The appellants have filed applications for dispensation of pre-deposit under Section 35F of the Central Excise Act, 1944 as has been made applicable to service tax matters vide Section 83 of the Finance Act, 1994. The appellants had approached the Hon'ble High Court of Orissa under Section 226 of the Constitution of India vide Writ Petition WP (C) No.15487 of 2018 praying for quashing or setting aside the impugned order dated 28.03.2018.

That in Para 5 of the said Writ Petition, the applicants/appellants had averred as under :

> *"5. That, there is no speedy and efficacious alternative remedy available to the Petitioners than to invoke the*

extraordinary jurisdiction under Article 226 & 227 of the Constitution of India before this Hon'ble Court seeking appropriate relief under law. Moreover, the requirement of pre-deposit of 7.5% of the duty demanded being Rs.123,77,95,928/- is highly onerous, prohibitive and wholly unreasonable especially since the demand is completely illegal, without jurisdiction and without authority of law."

The Hon'ble High Court has passed the order as below :

"Prima-facie, the exemption sought for as per the statutory provisions elaborated above are not granted.

In that view of the matter, the appeal shall be filed within a period of four weeks and till then no coercive action shall be taken against the petitioner. In our view, if an application is moved for exemption of pre-deposit of 7.5% keeping in view the statutory provision , the authority will consider the same and hear the matter on merit."

2. The Miscellaneous Applications have been filed for condonation of delay in filing the appeal before the Tribunal. The Ld.Advocate appearing on behalf of the appellant, submits that earlier, against the impugned order, they were before the Hon'ble High Court of Orissa and pursuant to the order in W.P.(C) No.15487 of 2018, they have filed appeals before the Tribunal on 2nd December, 2019. Since the appellants have filed this appeal within four weeks as directed by the Hon'ble High Court of Orissa, the applications for condonation of delay, are dismissed as infructuous.

3. Accordingly, the appellants are requested to furnish evidence of compliance of pre-deposit within eight weeks. Matters adjourned to **17.03.2020**.

Sd/
(P. K. Choudhary)
Member (Judicial)

Sd/
(P. Anjani Kumar)
Member (Technical)

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