

M/S Preeja Engineering Vs. Assessee: D.K. Sinha, Consultant

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Jan-27-2014

Judge : The Honourable Mr. M.V. Ravindran, Member (Judicial) & the Honourable Mr. H.K. Thakur, Member (Technical)

Appeal No. : Appeal No.ST/12416, 12417 of 2013-DB (Application No.ST/Stay/12117, 12118 of 2013) Arising Out of: OIA No.SRP/48, 67/VAPI/2013-14

Appellant : M/S Preeja Engineering

Respondent : Assessee: D.K. Sinha, Consultant

Judgement :

M.V. Ravindran, J.

1. When this matter was called, after hearing both sides for some time on the Stay Petition, we find that the appeal itself could be disposed of at this juncture, as the first appellate authority has dismissed the appeal for non-compliance of pre-deposit of Rs.5 lakhs as ordered by him.
2. In view of the above, we take up the appeal for disposal after disposing the Stay Petition.
3. On perusal of the records, we find that the issue involved in this case is regarding discharge of Service Tax liability by sub-contractor on the contract

received by them for period prior to 23.08.2007. We find that for the period in question in this appeal, there was a view which has been taken by the Tribunal that if the main contractor is discharging the Service Tax liability on the entire contract which has been executed by him and further sub-contracted to other sub-contractors, the Service Tax liability may not arise on the sub-contractors. We are of the view that this decision of the Tribunal will cover the issue in his favour. At the same time, we are unable to go into the merits of the case as the first appellate authority has dismissed the appeal for non-compliance. In our view, the first appellate authority should consider the issue on merit and dispose the appeal without insisting upon any pre-deposit. Accordingly, we set aside the impugned order and direct the first appellate authority to restore the appeal to its original number and dispose the same on merit, after following the principles of natural justice and without insisting upon any pre-deposit.

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