

[2012] 17 taxmann.com 105 (Kar.)

HIGH COURT OF KARNATAKA

Commissioner of Central Excise, Bangalore-III

v.

Bharat Heavy Electricals Ltd.

N. KUMAR AND RAVI MALIMATH, JJ.

C.E.A. NO. 83 OF 2010 FEBRUARY 10, 2011

Y. Hariprasad *for the Appellant.* **Madhu James, Sreekumar Nair, Lakshmikumaran** and **Sridharan** *for the Respondent.*

ORDER

1. This appeal is preferred by the revenue challenging the interim order of stay in particular the order directing the appellant to pay 10% of the demand as security while entertaining the appeal.
2. The learned counsel for the appellant submits that the Tribunal has committed a serious error in going into the merits of the appeal and in coming to the conclusion that the demand is barred by time and also on that basis directing deposit of 10% of the service tax. This according to the learned counsel is unwarranted and illegal and therefore, requires to be set aside.
3. The learned counsel for the respondent submits that in view of the amendment to the CENVAT Credit Rules in 2010 providing for proportionate credit, the order which is challenged in appeal has been recalled by the authorities and therefore, the appeal itself has become infructuous. In this view of the matter, the impugned order passed in the said appeal has no legs to stand. As the entire matter is concluded, this appeal is not maintainable and it is wholly misconceived.
4. When the order challenged in the appeal before the Tribunal itself is not in existence, this appeal filed against the interim order in that appeal certainly is not maintainable.
5. Accordingly, the appeal is rejected.

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