

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Central Excise Act Case No. 15/2010**

% **Reserved on: 20th October, 2011**
Date of Decision: 8th November, 2011

Slotco Steel Products Pvt. Ltd. Appellant
Through Mr. M.P. Devnath, Mr. Amar Pratap Singh
Mr. Aditya Bhattacharya, Advocates.

Versus

Commissioner of Central Excise, Delhi-I ...Respondent
Through Mr. Satish Kumar, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J.

The present appeal by Slotco Steel Products Pvt. Limited under Section 35G of the Central Excise Act, 1944, was admitted on 28th September, 2010, recording inter alia that the following two substantial questions of law arise for consideration:-

“1. Whether the CESTAT was correct in dismissing the Appeal of the Appellants by relying upon Section 9D of the Central Excise Act when the adjudicating authority had not invoked the provision in its order-in-original?

2. Whether the CESTAT has failed to appreciate that failure on the part of the Central Excise Department to produce witnesses on whose statement they are relying upon does not mean that the Appellant has given up its right for cross-examining the witnesses.”

2. The subject matter of challenge in the present appeal is the order dated 30th April, 2010, passed by Customs, Excise and Service Tax Appellate Tribunal (tribunal, for short) in E/STAY/1456/09-Ex in and Central Excise Appeal No. E/1408/09-EP and E/Stay/2252/09-Ex in and Central Excise Appeal No. E/2252/09-Ex.

3. As is noticeable from the title of the order that by the impugned order, the tribunal has disposed of both the stay application as well as the main appeals.

4. The appellant is engaged in manufacture of slotted angles, shelves, cable trays and other sheet fabrication goods falling under headings 7216, 7308 and 9403 of the Schedule to the Central Excise Tariff Act, 1985. The appellant submits that they were/are engaged in manufacture of above goods since 1988 and being a Small Scale Industrial (SSI, for short) unit were entitled to avail exemption from payment of central excise duty under notification No. 8/2003-C.E dated 1st March, 2003. The appellant had got themselves registered under the Act in 1997, but the registration was withdrawn on 4th April, 2003 as the clearances made by the appellant were always within the SSI limit.

The case of the appellant was that they were also trading in the said items. They used to purchase these items from other manufacturers/traders in addition to manufacturing the said goods themselves. The appellant have stated that they were/are registered under Delhi Sales Act/VAT Department as a manufacturer and a trader of steel goods.

5. On 27th December, 2005, officers of the prevention wing of the Central Excise Department spotted one loaded truck parked outside the factory premises of the appellee at Naraina Industrial Area. On being questioned, the driver of the truck admitted that the truck was loaded with goods in the factory of the appellant and had produced a bill in which the appellant was not mentioned as the consignor.

6. Premises of the appellant at B-81, Naraina Industrial Area were searched and statement of Subhash Khattar, Director of the appellant was recorded. The contention of the Revenue is that Subhash Khattar admitted his fault and accepted that the goods loaded in the truck belonged to the appellant and were manufactured by the appellant.

7. Thereafter the Revenue conducted detailed investigation on the so called purchases/trade/manufacture undertaken by the appellant and the purchases recorded by them. Statements of Mahesh Kaushik, Naresh Kaushik, Tarun Kaushik, who are related to each other were

recorded on different dates in 2005 and 2006. Premises of four concerns associated with them, namely Nahtek Engineers, Rising Steel Industries, Konark Engineers and Shree Krishna Trading were also searched. A search was conducted in the premises of Alpine Industries, Ganapati Enterprises and Instyle Creations and statements of Sandeep Dalmiya and Harish Dalmiya, proprietors of Instyle Creations and Alpine Industries were recorded. Harish Dalmiya was also managing affairs of Ganapathi Enterprises, sole proprietorship of his wife. Searches were conducted in the premises of SBJAY Auto Transmissions and statement of Jagmohan Aggarwal, Director of the said company was also recorded. Statements of Vikas Arora, proprietor of Sudarshan Industries, Anil Kanodia of K.G. Metal Industries and Ashok Arora, proprietor of SSP Manufacturing & Trading Co. were recorded on different dates of 2006 and 2007. Statement of Wajinder Singh, proprietor of Continental Steel Sales, Ruchika Furnishers and Western-Eastern Industrial Enterprises, and that of Rajendra Kumar Sharma, proprietor of Wembley Furnishers, were recorded in 2006 and 2007.

8. In addition, premises of Precision Steel Craft & Equipments were searched and statement of R.L. Batra, husband of one of the partners of the said firm was also recorded by the Revenue. Premises of Summit Engineering Corporation was searched and statement of Mukesh

Khanna, partner of the said firm was also recorded. Statement of Anil Kumar Jindal of Jindal Sons (India) Ltd. was recorded. Mr. Anil Kumar Jindal also made a statement on behalf of Jindal Industrial Corporation. Statement of M.L. Jindal of M/s M.L. Jindal & Sons was recorded. Investigation was carried out to locate Bankey Bihari Industries, Marshall Industries, Shiv Shakti Industries and Bhartia Industries from whom the appellant had claimed that they had made purchases but these parties could not be located/traced by the Department.

9. Pursuant to the investigations, a show cause notice dated 17th October, 2007, was issued to the appellant for evasion of duty amounting to Rs.1,48,60,803/- during the period 2002-03 to 2005-06. Reliance was placed by the Revenue on the statements of various persons recorded during the investigation. For computation of the quantum of the alleged clandestine but not declared manufactured goods, the Revenue relied upon comparative electricity consumption of another manufacturer, namely SSP Manufacturing & Trading Company. The appellant belatedly filed their reply to show cause notice on 17th December, 2008, denying the allegations. The appellant also requested for an opportunity to cross-examine the persons whose statements had been relied upon by the Revenue. Matter was thereafter fixed on 7th

January, 2009 for personal hearing/cross-examination. Order-sheet of the said date reads as under:-

“Present Sh B.Lakshmi Narsimhan, Learned Advocate on behalf of Noticee No.1 & 2 Sh Subhash Khatter was also present in person. Learned Advocate filed his vakalatnama on behalf of both the noticees. Learned Advocate submits that they have also filed detailed written reply on behalf of the company M/s Slotco Steel (Noticee No.1). Sh Subhash Khatter, noticee no.2 seeks to file written submissions on his behalf which are duly taken on record. Noticees had sought cross-examination of 15 persons. Notice for cross examination for today have been duly issued to all those 15 persons. Sh Mahesh Kaushik vide his letter dated 2.1.2009 addressed to Superintendent (Adj.) on behalf of himself, Tarun Kaushik and Naresh Kaushik has declined to come for cross-examination and stated that their statements recorded earlier may be relied upon. Notice addressed to Sh Rajender Dutt Sharma and Sh. Jitender have come back from postal authority with the remarks that no such persons have been found on the given address. No communication have been received from other 10 persons called for cross-examination. In such circumstances Learned Advocate very graciously agreed that there is no alternative but to proceed with the personal hearing. He very pains-takingly takes me through written submissions filed by him on behalf of both the notices and submits that it is clear from the written submissions that no case whatsoever has been made out against his clients. It is his submission that there is no evidence on record against his clients except statements recorded from those suppliers. Since they have not turned up for cross-examination, show cause notice has to be considered without relying on the statement of these persons.

He seeks one week's time to file additional written submissions to support the submissions made by him. Time granted. He also requests for photocopy of letter dated 2.1.2009 sent by Sh Mahesh Kaushik addressed to Superintendent (Adj.) to enable him to submit written reply. Request is granted.

He also seeks to file compendium of notifications and citation relied upon by him in his written submissions which is duly taken on record. He has nothing further to add.”

10. As is apparent from the said order-sheet, the proceedings were closed. The appellant had filed another additional written submissions after closure of hearing. In the written submissions, it was stated as under:-

“The Noticees submit that in the present Show Cause Notice demands have been raised against the Noticees based on the uncorroborated statements of certain suppliers, and their officers, the tempo driver Shri Jitender and Mr. Vijender Kumar of M/s. Surya Enterprises. Further the statements of certain other individuals viza. Shri Vicky Gupta and Mrs. Sunita Gupta of M/s. Surya Enterprises, and Mr. Anil Kanodia of M/s. K.G.Metal Industries is also relevant for final determination of the present case.

The Noticees strongly dispute the statement/statements subscribed by any individual/individuals concerned directly or indirectly with the Noticees, where the contents of such statements is/are inconsistent with the fact not supported by any documents/record. The Noticees do not give credence to such un-corroborative statements, whhic may have been extracted under extraneous circumstances or by exploiting individual interest. The Noticees contend that such incriminating statements are malicious and not have any evidentiary value in the eye of law. The statements which are not supported by any documentary evidence don't carry any value under the law. On this submissions the Noticees rely on the following decision:-

(i)Premium Packaging Vs. CCE, 2005(184) ELT 165 (T)

(ii)Raj Petroleum Products vs. CCE, 2005(192) ELT 806 (T)

(iii) Hindustan Aegis LPG Bottling Co. Vs. CCE, 2005(182) ELT 180(T)

(iv)CCE Vs. Latex Chemicals, 2005(181) ELT 138(T)

The Noticees have already submitted copies of the above referred decisions in the compilation submitted to the Ld. Commissioner on 07.01.2009 during the Personal Hearing.

To prove its defence the Noticees had requested for cross-examination the above referred persons whose statements have been relied upon by the Department to raise the present duty demand. However, none of the above referred witnesses presented themselves for being cross-examined by the Noticees.

It is submitted that as none of the witnesses on whose statement Department has relied for raising the demand in the present Show Cause Notice, have been produced for being cross examined by the Noticees. Department cannot rely on their statement to sustain the demands raised on the Noticees.

The Noticees submit that as the witnesses on whose statement Department has relied have failed to answer the summon and produce themselves for cross examination no sanctity or credence can be attached to the statements made by them to the Central Excise Officers.

It is submitted that therefore the Ld. Commissioner has to adjudicate the present Show Cause Notice without considering or relying on the statements given by the witnesses which have been relied upon in the Show Cause Notice by the Department. The Tribunal in a host of decisions has held that the statements of witnesses who have not been produced for cross examination cannot be relied upon by Department to sustain the allegations made on the assessee or to confirm the demands raised on the assessee."

11. The assessing officer thereafter passed an order dated 27th January, 2009. He relied upon statements of the witnesses who had not been cross-examined, inter-alia recording as under:-

"I thus have no hesitation to hold that all the statements admitting offence committed by them including giving facts are all tangible evidence. It is also a matter of record that none of the statements being relied upon by the department have been retracted by anyone till date. On the request of the noticee, due opportunity for cross examination was also offered. The fact that the person summoned for cross examination choose not to come or not to respond or to stick to their earlier statements recorded under Section 14 of the Central

Excise Act, 1944 does not dilute the department's case against the noticee."

12. We have recorded in detail the aforesaid aspects for two reasons.

Firstly Section 9D of the Act was not relied upon and pressed into service by the Assessing Officer and secondly there is a dispute between the appellant and the Revenue with regard to whether the appellant on 7th January, 2009, had voluntarily given up their right to cross-examine the witnesses or whether the appellant had argued the matter on the assumption, which is also their contention, that the statements of the persons who have not been cross-examined cannot be relied upon.

13. The tribunal in the impugned order has referred to Section 9D of the Act and has applied the same. Section 9D reads as under:-

"9-D. Relevancy of statements under certain circumstances –

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.”

14. The constitutional validity of the said Section was challenged and rejected by this Court in ***J & K Cigarettes Ltd. vs. Collector of Central Excise***, 2009(242) E.L.T. 189 (Del.). A Division Bench of this High Court examined the scope and ambit of Section 9D and held that the said Section is applicable in the following circumstances:-

“(a) when the person who had given the statement is dead;
(b) when he cannot be found;
(c) when he is incapable of giving evidence;
(d) when he is kept out of the way by the adverse party;
and
(e) when his presence cannot be obtained without an amount of delay or expense, which the Officer considers unreasonable.”

15. It was held that the aforementioned circumstances are exceptional circumstances and not ordinary or normal circumstances. Before Section 9D of the Act is applied or enforced, the authority must examine whether the conditions or pre-requisites mentioned above are satisfied. Accordingly, the said section itself provides safeguards and that Section 9D cannot be enforced or applied without the authority examining and considering whether the conditions mentioned in Section 9D are satisfied or not. In this regard, we may appropriately reproduce paragraphs 26 to 31 of the said decision:-

“26. Interestingly, the learned senior counsel for the petitioners did not join the issue that the aforesaid

circumstances are not exceptional circumstances. They are the circumstances which naturally would be beyond the control of the parties and it would not be possible to produce such a person for cross-examination who had made a statement on earlier occasion. The provisions under Section 9-D of the Act are necessary to ensure that under certain circumstances, as enumerated therein, viz. if the witness has been won over by the adverse party or is avoiding appearance despite several opportunities being given. The rationale is that decision making in a case cannot be allowed to continue in perpetuity. These provisions are based on the Doctrine of Necessity. It provides for relevancy of statements recorded under Section 14 of the Act dispensing with or without the opportunity for testing the truth of such evidence by cross-examination. For, when a person is dead or incapable of giving evidence or cannot be found, no better evidence can be had in the circumstances than the statement tendered by witnesses before a quasi-judicial authority. The safeguards which are enumerated in the provision under Section 32 of the Evidence Act are essential as the provision provides for an exception to the rule of exclusion of hearsay evidence, while proving for relevancy of even direct oral evidence of the fact under enquiry, which otherwise is not admissible, to ensure that there is no miscarriage of justice. Similarly, provisions under Section 9-D provide for relevancy of statements recorded under Section 14 of the Act, under certain circumstances, in criminal as well as quasi judicial proceedings, to meet the ends of justice.

27. We, thus, are intent to agree with the submission of the learned Addl. Solicitor General that if an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the same subject, viz. relevancy of statement of fact by person who is dead or cannot be found under certain circumstances, passed with the same purpose and for the same object, the safe and well known rule of construction is to assume that the legislature, when using well- known words upon which there have been well known decisions, use those words in the sense which the decisions have attached to them. The provisions under Section 32 of the Evidence Act have not been found to be ultra vires of the Constitution. Therefore, the provisions under Section 9-D of the Act, which are pari materia with the provisions under Section 32 of the Evidence Act, cannot be held as ultra vires of the Constitution.

28. The moot question that arises at this stage is as to whether the provision in question is arbitrary. Such a provision can still be held to be offending Article 14 of the Constitution and can be termed as arbitrary if it is established that the provision gives uncanalised and uncontrolled power to the quasi judicial authorities. But, we are of the opinion that it is not so. The safeguards are inherent in the provision itself. In the first instance, only those statements of such persons, which are made and signed before the Central Excise Officer of a gazetted rank, are treated as admissible. Thus, protection is taken to treat the statements relevant only if they are made before an officer enjoying a higher rank/status. Secondly, (and that has already been taken note of) such statements are made relevant only under certain specified circumstances, and these are the ones which are beyond anybody's control. Thirdly (and this is most important), the quasi-judicial authority can rely upon the statement of such a person only when the stated ground is proved. For example, in those cases where the person who made the statement is dead, there should be sufficient proof that he is dead. In case, where a person cannot be found, the authority would have to form an opinion, based on some material on record, that such a person cannot be found. It would not be mere ipse dixit of the officer. In case, cogent material is not there to arrive at such a finding, the persons against whom the statement of such a person is relied upon can always challenge the opinion of the authority by preferring appeal to the higher authority, which appeal is statutorily available. Same yardsticks would apply to other grounds. If the quasi judicial authority opines that a person is incapable of giving evidence, formation of such an opinion has also to be predicated on proper material on record, which could be in the form of mental or physical disability of such a person.

29. Thus, when we examine the provision as to whether this provision confers unguided powers or not, the conclusion is irresistible, namely, the provision is not uncanalised or uncontrolled and does not confer arbitrary powers upon the quasi judicial authority. The very fact that the statement of such a person can be treated as relevant only when the specified ground is established, it is obvious that there has to be objective formation of opinion based on sufficient material on record to come to the conclusion that such a ground exists. Before forming such an opinion, the quasi-judicial authority would confront the assessee as well, during the proceedings,

which shall give the assessee a chance to make his submissions in this behalf. It goes without saying that the authority would record reasons, based upon the said material, for forming the opinion. Only then, it would be possible for the affected party to challenge such a decision effectively. Therefore, the elements of giving opportunity and recording of reasons are inherent in the exercise of powers. The aggrieved party is not remediless. This order/opinion formed by the quasi judicial authority is subject to judicial review by the appellate authority. The aggrieved party can always challenge that in a particular case invocation of such a provision was not warranted.

30. Therefore, it cannot be said that the provision gives uncanalised or uncontrolled power upon the quasi judicial authority. Granting of opportunity and passing reasoned order are the conditions inbuilt in exercise of power by any quasi judicial authority and, therefore, it is not necessary that these conditions should be specifically mentioned in the provision. The very fact that before power under Section 9- D(2) of the Act could be exercised, the authority has to satisfy itself about the existence of any of the conditions stipulated therein, which provides clear and sufficient guidance to such quasi judicial authority to exercise its power under the section. We may also state that such arguments have been repelled by the Supreme Court on number of occasions. {See – Harishankar Bagla v. State of Madhya Pradesh, AIR 1954 SC 465; and Bhatnagars & Co. Ltd. v. Union of India, AIR 1957 SC 478}.

31. Interestingly, even in the present case, the attempt of learned senior counsel appearing for the petitioners was to show that the respondent No.1 ought to have given prior intimation and granted an opportunity to the assessee to make its submissions on invocability of Section 9-D itself and thereby enabling the assessee to take appropriate steps, as may be possible, in the circumstances of the case. He submitted that if a particular witness was not allowed to be cross-examined by stating that it was not possible to procure his presence without delay or expense, had the opportunity been given to the petitioners to meet the expenses, the petitioners would have borne the expenses and could have procured the presence of witnesses. Likewise, he argued that if the opinion was that it is the adverse party, i.e. the petitioner, who kept a particular person out of the way, the petitioner should have been confronted with that so as to enable him to contact the witness through his own resources and inform him about the time and place of the cross-

examination, or else, to enable the petitioners to clarify the relevant facts and assist and cooperate with the adjudicator in contacting the witness. These examples, at the most, would indicate as to how the powers are to be exercised by the adjudicating authority. That would not make the provision arbitrary. As stated in the beginning, validity of the provision is totally different from exercise of powers by an authority invoking those provisions. We may only refer, at this stage, to the judgment of the Supreme Court in the case of Mahesh Chandra v. Regional Manager, U.P. Financial Corporation, (1993) 2 SCC 279. In that case, the Supreme Court categorically observed that wherever wide power is conferred by statutes on public functionaries, the same is subject to inherent limitation that it must be exercised in just, fair and reasonable manner, bona fide and in good faith; otherwise, it would be arbitrary. In such cases, test of reasonableness is more strict. Following observations therefrom are worth quoting:-

“15. Every wide power, the exercise of which has far reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason.”

16. As noticed above, Section 9D of the Act was not relied upon by the Assessing Officer. He did not examine and go into the aspect as to whether the pre-conditions or the prevailing circumstances justified the invoking of Section 9D. The contention of the appellant is that when the matter was heard by the tribunal on 19th March, 2010, the Revenue had not relied upon or referred to Section 9D of the Act during the course of arguments. During the course of hearing before us, learned counsel for the Revenue could not controvert or deny the said statement. It may be noted that both the appellant and the Revenue had filed written submissions before the tribunal after the hearing was held on 19th March, 2010. We have examined the said written submissions and appellant had not referred to Section 9D of the Act in their written submissions. The respondent Revenue in their written submissions had also not relied upon Section 9D of the Act. However, as noticed above, the tribunal, in paragraphs 15 to 19 of the impugned order dated 30th April, 2010, has gone into the question of statements of witnesses which were not cross-examined and has applied Section 9D of the Act. It is apparent that the tribunal has invoked the said Section and held that the conditions mentioned in the said Section are satisfied. Learned counsel for the appellant is right in their contention that the said section could not have been invoked by the tribunal

without the appellant being given an opportunity to meet the said contention. It is the contention of the appellant before us that the pre-conditions of Section 9D are not satisfied and that the said section cannot be invoked. It is submitted that the judgment of this Court in ***J&K Cigarettes*** (supra) requires satisfaction of the said conditions and an opportunity should have been given to the assessee to contest and oppose the applicability of Section 9D of the Act. The observations of the Delhi High Court in ***J&K Cigarettes*** (supra) quoted above supports the aforesaid contention of the appellant that an opportunity should be given to the assessee to offer explanation and contest, when the Revenue relies upon Section 9D of the Act.

17. We refrain from going into the contentions of the appellant on merits that on the facts of the present case, the conditions mentioned in Section 9D including condition No. (e) are not satisfied. We may only record that it is a submission of the appellant that the assessing authority had not given or recorded any finding to the effect that presence of witnesses cannot be obtained without undue delay or expense, which the officer concerned considers to be unreasonable. Appellant, in this connection, has relied upon order dated 7th January, 2009 and had urged that summons were issued only once but no opportunity was granted to the appellant to serve the summons on the

witnesses. It is stated that the appellant should have been given another opportunity. It is also contended that the question of quantum of demand is also an issue and that the tribunal has accepted the entire quantum/addition. It is pointed out that the assessment order confirms the entire demand mentioned in the show cause notice dated 17th October, 2007 for a sum of Rs.1,48,60,803/- and a penalty of equal amount has been imposed along with an interest thereon. A penalty of Rs.50/- lakhs has been imposed on the Director.

18. As we find that the matter requires a remit for a fresh decision, we are not specifically answering the question whether Section 9D can be invoked and relied upon by the tribunal when the adjudicating authority has not relied upon the said section in its order. This aspect can be examined by the tribunal while deciding the matter on remand. We may, however, note the contention of the Revenue that Section 9D is a procedural section and when conditions mentioned in the said section are satisfied, it comes into operation and can be applied and it is immaterial whether the Assessing Officer has specifically invoked the said provision or mentioned the same. The contention of the appellant is to the opposite.

19. In view of the aforesaid discussion, question No.2 raised above is partly answered in favour of the appellant and against the respondent

and it is held that this aspect has to be reexamined and reconsidered by the tribunal. In respect of question No. 1, it is directed that the tribunal will reexamine the question of application of Section 9D of the Act.

20. The appellant during the pendency of the investigation had deposited a sum of Rs.28 lakhs on account of excise duty. As per the impugned assessment, total duty evaded by the appellant is Rs.1,48,60,803/-. Penalty of an equal amount has been imposed. Even if Rs.28 lakhs is reduced from the aforesaid amount of Rs.1,48,60,803/-, the appellant is still liable to pay Rs.1,20,60,803/- towards duty as per the assessment order. The stay application filed by the appellant before us has been dismissed. Thus, the entire demand including penalty can be recovered. As an interim measure, we feel that the appellant should deposit a further sum of Rs.30 lakhs within one month with the respondent Revenue and should file an undertaking with the tribunal that they shall not create any encumbrances and dispose of their immovable assets including fixed plant and machinery without the permission of the tribunal. Details of existing encumbrances, if any, on the assets, will be stated in the undertaking. The aforesaid direction has been given to cut short delay and on balance of equities. As noticed above, the orders passed on the stay application is itself subject matter

of challenge in this appeal on which an order of remand for fresh decision has been passed.

21. The appeal is accordingly disposed of. No costs.

(SANJIV KHANNA)
JUDGE

(R.V. EASWAR)
JUDGE

November 8th, 2011
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