IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO.4792 OF 2015

WITH

WRIT PETITION NO.4805 OF 2015

Kailash Yadav
Age: 55 Yrs., occu. Service/Business,
Proprietor Shridhar Metal
R/o Mangal Murthy Colony,
Room No.67, Kamlapur Road,
Ranjangaon Phata, Ranjangaon (F.C.),
At Post Ghanegaon, Tal. Gangapur,
District Aurangabad. - PETITIONER

VERSUS

1) The Union of India
Through the Ministry of Finance,
New Delhi

2) The Commissioner,
Central Excise, Customs & Service
Tax, N-5, Town Center, CIDCO,
Aurangabad-431030. - RESPONDENTS

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Mr.Anand Bhandari, Advocate for Petitioner/s
Mrs.Kalpalata Patil-Bharaswadkar,Adv.For respondents.

CORAM : R.M.BORDE &
P.R.BORA,JJ.

DATE : 10th JULY,2015.

ORAL JUDGMENT (PER:- R.M.BORDE,J.)

1) Heard. Rule, with the consent of the parties, the petitions are taken up for final disposal at the admission stage.

2) The petitioner is objecting to the order dated 5.3.2015 issued by Customs Excise Service Tax Appellate Tribunal, WZB, Mumbai, directing the petitioner to deposit 7.5% of duty amount and furnish proof thereof to the Tribunal. The amount is directed to be deposited within four weeks from the date of order i.e. 5.3.2015.

3) Counsel appearing for the petitioner contends that since the order impugned before the Tribunal is dated 6th May, 2014 passed by the Commissioner, Central Excise, the amended provisions of Section 35-F enforced from 6.8.2014 shall not apply. The petitioner is also impeaching constitutional validity of Section 35-

F of the Central Excise Act and Section 129-E of Customs and Excise Act, 1962, as amended by Finance Act No.2/2014.

4) It is not a matter of dispute that prior to the amendment, an assessee was required to make deposit of 100% amount at the time of presentation of the appeal and there was discretion conferred on the Tribunal to waive the statutory deposit or impose any condition in respect of deposit of lesser amount. The discretion, so vested in the Tribunal in accordance with the unamended provisions, has been taken away by virtue of the amendment enforced by Finance Act No.2/2014.

5) The petitioner contends that, in fact, since the order impugned is passed prior to enforcement of the amended provisions, there is still discretion available with the Tribunal and the condition, as regards pre-deposit, needs to be waived. We agree to the proposition put forth

`by petitioner. Apart from this, it has been pointed out that there were two appeals presented by M/s Shridhar Metals c/o Aurangabad Electricals Ltd, raising the very issue, which is the subject matter of appeal before the Tribunal, in the instant matter. The liability fastened against the Aurangabad Electricals Ltd also arises out of same series of transactions as in the present petition. The appeal presented by Aurangabad Electricals Ltd has been allowed by the Tribunal by order dated 15^{th} June, 2015 and the order passed by the Commissioner in respect of recovery of the dues, as far as the liability of Aurangabad Electricals Ltd is concerned, has been quashed. It is not a matter of dispute that the instant appeal also gives rise to the very same issue, which has been dealt with in the matter of Aurangabad Electricals Ltd. It is also not a matter of dispute that the liability arising in the instant matter also arises of out of the same series of transactions as in the matter of Aurangabad electrical ltd.

6) In all probabilities, it is contended that the appeal presented by the petitioner is liable to be allowed by applying the principle of parity. In such circumstances, without going into merits of the controversy involved in the matter, we direct the Appellate Tribunal to accept the appeal presented by the petitioner and decide the same in accordance with law, without insisting for any pre-deposoit, as expeditiously as possible and preferably within one month from today. The petitioner shall appear before the Tribunal on **17th July, 2015** and as such, no separate notice for causing appearance before the Appellate Tribunal is necessary.

7) Counsel appearing for the petitioner does not press the challenge in respect of constitutional validity of provisions of Section 35-F of the Central Excise Act, 1944 and Section 129-E of the Customs Act, 1962, as amended by Finance Act No.2/2014. It is, however, clarified

that in the peculiar facts and circumstances of the present case, we have issued the instant directions, restricting to this matter only and this shall not be treated as precedence.

8) Rule is accordingly made absolute in the aforesaid terms. There shall be no order as to costs.

sd/-	**sd/-**
(P.R.BORA)	**(R.M.BORDE)**
JUDGE	**JUDGE**

bdv/