

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FERA APPEAL NO.4 OF 2015

IN

APPEAL NO.108 OF 2010

Vaseem Iqbal Kapadia.

... Petitioner.

Vs.

1.Union of Inida & Anr.

... Respondents

Mr.B.Seshagopalan, for the Petitioner.

Mr.A.J.Rana, Senior Advocate with Mr.Salil Shah & Ms.Asha Bhambwani, for the Respondents.

**CORAM : S.C. DHARMADHIKARI &
G.S. KULKARNI, JJ.**

DATE : 29th JUNE, 2015.

P.C. :

1. We have heard both the sides and with their assistance we have perused the impugned order of the Tribunal. From the reading thereof, we are of the opinion that the appeal raises substantial question of law. It is admitted on the following substantial question of law:-

“(A) Whether, in the facts and circumstances of the case, the impugned order of the Appellate Tribunal in passing order of two different amounts by way of pre-deposit and

bank guarantee in the Stay Petition for waiver of pre-deposit of penalty amounts to non application of mind, self contradictory and therefore, unsustainable in law when the Directorate is already having seized Indian currency which was not confiscated and the foreign currencies could not have been seized through addendum without affording opportunity ?”

2. Although the order under challenge is an interim order, having perused the same, our view is that the ultimate direction and to grant conditional waiver and stay, is inconsistent with and does not agree with the prima facie conclusions which have been reached.

3. In the order under challenge at more places than one the Tribunal has observed that the main appeal arising out of the adjudication dated 22.1.2010 and the subsequent addendum dated 15.2.2010 raises several questions of facts and law. After noting the rival contentions, the Tribunal in paragraph 7 has observed that no final view can be expressed at the stage of grant of stay but the grounds would require in-depth consideration. Apart from the violation of principles of natural justice, the other aspects on merits also require deeper scrutiny. The Tribunal has observed that it is

convinced that the appellant has an arguable case. In the circumstances, we do not think why the conditional order was passed. The direction to deposit 10% of the total amount of penalty and to furnish bank guarantee for the balance 90% of the sum adjudicated and demanded, in effect and in substance means denial of stay. This is clear from the conditions that have been imposed. Once the case is arguable and the Tribunal is required to consider several grounds and in-depth, then we do not see justification for imposition of such conditions.

4. Without expressing any opinion on the rival contentions and particularly on the merits of the controversy, we allow this appeal. There will be an unconditional waiver of the pre-deposit and stay during the pendency of the appeal before the Tribunal. The appeal is allowed accordingly. There will be no order as to costs.

(G.S.KULKARNI, J.)

(S.C. DHARMADHIKARI, J.)