IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8492 OF 2014

M/s. Afloat Textiles (India) Ltd. ... Petitioner

Vs

1. Union of India & Ors. ... Respondents

Mr. Prakash Shah with Mr. Jas Sanghvi i/b PDS Legal for the Petitioner.

Mr. A.S. Rao for the Respondent Nos.1 and 2.

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

THURSDAY, 30TH JULY, 2015

P.C. :

1. By this Writ Petition under Article 226 of the Constitution of India, the petitioner challenges the order passed by the Customs Excise and Customs Service Tax Appellate Tribunal (for short "CESTAT"), West Zonal Bench, at Ahmedabad dated 7^{th} April, 2014.

2. An application was made by the petitioner for restoration of a

appeal being Appeal No.E/2461/1999-DB. The restoration application is numbered E/ROA/22436 of 2013. In the restoration application, the petitioner pointed out that the petitioner had filed an appeal arising out of the order in appeal dated 26th February, 2009. It is submitted by Mr. Shah and Mr. Sanghavi appearing for the petitioner that on two different dates viz. 17th October, 2008 and 2nd February, 2009, this appeal was heard in part. However, the petitioner could not be represented on these dates because an order of winding up was passed by this Court on 11th April, 2007 and a Provisional Liquidator came to be appointed. Annexure-D to this Writ Petition is a copy of the said order passed by this Court. The Court observed that the winding up order is required to be passed on the satisfaction reached by it. The order of winding up was in force from 22nd March, 2007, till 9th May, 2013. On 9th May, 2013, by an order passed on an application styled as an application for recalling the order of winding up and that of the appointment of the Official Liquidator, this Court allowed the same.

3. It is pursuant to such development that the petitioner-appellant sought restoration of the appeal before the CESTAT but by the

impugned order the same has been dismissed.

4. The Tribunal essentially relied upon a communication addressed on 7th April, 2014, to the Tribunal's Registry in which the petitioner requested for three months' adjournment. That was prayed because the petitioner was required to pursue an application viz. Company Application No. 95 of 2014 filed in this Court. Since that application had some bearing on the winding up of the petitioner and certain pending proceedings before the Board for Industrial and Financial Reconstruction that this adjournment was sought.

5. The petitioner eventually succeeded in pursuing this Court to set aside the winding up order. It was set aside as well. In these circumstances the petitioner could not remain present to argue the restoration application. The restoration application also has been dismissed by the Tribunal and that is how the aggrieved petitioner-appellant in the appeal has approached this Court.

6. We have heard Mr. Rao appearing on behalf of the respondents

on notice. Mr. Rao fairly stated that the compilation of the orders which is forwarded would denote as to how the proceedings in winding up were taken up by this Court and from time to time. He also does not dispute the final order passed recalling the winding up of the petitioner-company. However, he would submit that the Tribunal was in no error in dismissing an appeal for want of any assistance by the petitioner simply because the petitioner wrote several letters and never showed any inclination to argue the restoration application. That is how Mr. Rao would support the reasoning of the Tribunal in paragraph 3 of the impugned order.

7. After having heard both sides and perusing with their assistance the petition paper-book so also the compilation of orders, we are of the clear view that the law does not permit the course adopted by the Tribunal. Throughout the legal position was as enumerated and summarised by the Hon'ble Supreme Court in the case of *Balaji Steel Re-rolling Mills vs. Commissioner of Central Excise and Customs reported in 2014 (310) ELT 209*. The Hon'ble Supreme Court has clarified that once there is no power in the Tribunal to dismiss an

appeal for want of prosecution, then, the orders of this nature cannot be sustained. The Hon'ble Supreme Court has held that the Act viz. Central Excise Act, 1944, enjoins upon the Tribunal to pass an order on the appeal confirming, modifying or annulling the decision or order appealed against or it may remand the matter. It does not give any power to the Tribunal to dismiss the appeal for default or for want of prosecution in case the appellant is not present when the appeal is taken for hearing. In the light of this clear pronouncement of law we cannot sustain the impugned order. The initial dismissal itself being contrary to law, the refusal to restore the appeal for adjudication on merits cannot be sustained.

8. In the light of the above direction, we set aside the earlier order as also the impugned order of the Tribunal. We restore the appeal of the petitioner viz. Appeal No.E/2461/1999 to the file of the Tribunal viz. CESTAT, West Zonal Bench at Ahmedabad for being adjudicated on merits and in accordance with law. Once we also find that there was a justification for the petitioner's non appearance before the Tribunal on the two dates mentioned above viz. in 2008 and 2009 as

the company was in winding up, then, in the peculiar facts of this case, we refrain from imposing any further conditions or costs. However, we would direct the petitioner to appear before the Tribunal on 17th August, 2015, and on which date the Tribunal may consider and depending upon exigency of work to take up the appeal itself for hearing and final disposal. In the event it is engaged in other proceedings the Tribunal may fix a date of its convenience. The parties assure us that they would cooperate with the Tribunal in early disposal of the appeal which is pending from 1999. Therefore, once the Tribunal fixes a date for appearance and hearing of the appeal as per its schedule, it must thereafter endeavour and dispose of the appeal in accordance with law but within a period of three months from the first date of hearing. All contentions of merits of the matter are kept open.

9. The Writ Petition is allowed in the above terms. No order as to costs.

G.S. KULKARNI, J. ***S.C. DHARMADHIKARI , J.***