IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 10269 OF 2015

Larsen and Toubro Limited .. Petitioner.
V/s.
The Union of India
through the Secretary, Ministry of Finance
Dept. of Revenue & Others .. Respondents.

Mr. Prakash Shah with Mr. Jas Sanghvi i/b. PDS Legal, for the Petitioner.
Mr. Pradeep Jetly with Mr. J. B. Mistri, Sr. Advocate, for the Respondents.

CORAM: M.S.SANKLECHA, &
G.S.KULKARNI, JJ.
DATE : 19th NOVEMBER, 2015.

P.C:-

At the request of the parties, Petition itself is taken up for final disposal, at the stage of admission.

2 This petition under Article 226 of the Constitution of India challenges the order dated 17th September, 2015 passed by the Assistant Commissioner of Central Excise to the extent it adjust the rebate sanctioned to the Petitioner against a pending demand raised on the Petitioner.

3 By the impugned order dated 17th September, 2015 the Assistant Commissioner of Central Excise has sanctioned rebate claim of Rs. 1.49 Crores under Section 11-B of the Central Excise Act, 1944 (the Act). However, instead of handing over the same to the petitioner, the

Assistant Collector has further proceeded to adjust the amount of Rs.1.49 Crores being the sanctioned rebate claim against confirmed demand of Rs.2.38 Crores in exercise of his powers under Section 11 of the Act.

4 The primary contention raised by the Petitioner before us is that, the impugned order has been passed in breach of principle of natural justice i.e. without any show cause notice or any personal hearing being granted.

5 Normally, we would not have exercised our extra ordinary power of writ jurisdiction, as an alternative remedy of appeal under Section 35 of the Act is available to the Commissioner of Central Excise (Appeals) from the impugned order dated 17th September, 2015. However, as the impugned order has been passed in breach of principle of natural justice, we are exercising our extra ordinary writ jurisdiction. In fact, the Apex Court in ***Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai 1998 (8) SCC 1*** has, inter alia, observed to the effect that though the power to issue prerogative writ under Article 226 of Constitution of India is plenary in nature, the Court have imposed upon itself restriction of not entertaining a Petition where the party has an effective and efficacious remedy available under the statute. The Court further observed that when the Petition is for the enforcement of the fundamental rights or to challenge an order passed in breach of principle of natural justice or challenge is to an order being without jurisdiction or where the vires of an Act is challenged, then in such cases, the Court may consider in an appropriate case exercising its extra ordinary jurisdiction under Article 226 of the Constitution of India.

6 In the present facts, we find that in view of the breach of principles of natural justice in passing the impugned order, grave prejudice is caused to the Petitioner inasmuch as an amount of Rs.1.49 Crores being the sanctioned rebate claim is being adjusted against a confirmed demand of Rs.2.38 Crores which is stayed by the orders dated 22nd December, 2012 and 18th May, 2015 of the Customs, Excise and Service Tax Appellate Tribunal. The impugned order has not considered the above aspect as in the absence of the Petitioner being served with a show cause notice or being granted an opportunity for personal hearing, the aforesaid facts could not be brought to the notice of the Assistant Commissioner of Central Excise.

7 In the circumstances, we set aside the impugned order dated 17th September, 2015 to the extent the rebate claim of Rs.1.49 Crores granted as being adjusted against the confirmed demand of Rs.2.38 Crores in exercise of power under Section 11 of the Act. It is made clear that the Assistant Commissioner of Central Excise would adjudicate on the issue of adjusting an amount of Rs.1.49 Crores (being the rebate granted) against the pending demand, in accordance with the principles of natural justice. Needless to state, the Assistant Commissioner of Central Excise would decide the above issue as expeditiously as possible, preferably within 12 weeks from today.

8 All contentions left open.

9 **Writ Petition disposed of** in the above terms. No order as to costs.

(G.S.KULKARNI,J.) **(M.S.SANKLECHA,J.)**