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

CENTRAL EXCISE APPEAL (L) NO.7 OF 2015

Elixir Training Services Private Limited ..Appellant
-Versus-
The Commissioner of Central Excise, Pune III ..Respondent

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Mr. Bharat Raichandani a/w Mihir Deshmukh & Rajan Mishra i/b. Gaurav Agrawal for the Appellant.
Mr. Pradeep S. Jetly a/w Jitendra B. Mishra for the Respondent.

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CORAM: S.C. DHARMADHIKARI
AND
S. P. DESHMUKH, JJ.

DATE :- 16th FEBRUARY, 2015.

P.C.:

Having heard both sides and perusing the order passed by the Tribunal, we are of the view that the Appeal raises substantial questions of law. It is admitted on the following two substantial questions of law:-

"(a) Whether in the facts and circumstances of the case, the Appellate Tribunal was justified in directing the Appellants to pre-deposit Rs.47,81,669/- without even considering the prima facie merits of the case and passing a non-speaking order?

(b) Whether in the facts and circumstances of the case, the Appellate Tribunal was justified in overlooking the earlier

> order passed by the Appellate Tribunal, in the Appellant's own case, for earlier period, wherein complete waiver had been granted on merits?"

2] At pages 26 to 27 is a true certified copy of the Tribunal's order dated 29th September, 2014 on the application seeking incorporation/additional grounds in the Memo of Appeal. There was no question of the Tribunal passing any order in such an application on waiver of the condition of pre-deposit. The order reads as under:-

> *"The applicant has filed this miscellaneous application for adding additional ground in their "grounds of appeal".*
>
> *2. Heard both sides and considered the submissions.*
>
> *3. The contention of the applicant is that the demand is barred by limitation, therefor, the miscellaneous application for additional ground be allowed.*
>
> *4. Considering the stay application, we find that in this case the demand is for the period 01.04.2011 to 31.03.2012 and the show cause notice has been issued on 17th July, 2013. We find that some demands pertains to the period within limitation which works out to Rs.47,81,669/-. Therefore, we direct the applicant to make a pre-deposit of Rs.47,81,669/- within a period of 12 weeks from today. On such compliance, balance amount of service tax, interest and penalty shall be waived and recovery thereof is stayed during the pendency of appeal. Miscellaneous application is allowed.*
>
> *5. Report compliance on 12.01.2015."*

3] We are of the view that the Tribunal could have at least recorded that on such an application, the Assessee sought stay of recovery of the amount of duty, interest etc. and that the argument on the point of limitation was the only argument canvassed. Then, possibly we would not have been required to admit this Appeal. The Tribunal's order does not indicate that what the arguments were or they are only restricted to this point. Thus, the Tribunal was required to see whether any prima facie case has been made out and to what extent. That would include the issue as to whether the demand raised was within the limitation in its entirety or in part. We do not find any consideration also on the point of financial hardship and how to balance the equities, if such was the situation. In the circumstances, this unreasoned and cryptic order of the Tribunal deserves to be quashed and set aside.

4] We allow this Appeal by quashing and setting aside the impugned order of the Tribunal and restoring both applications to the file of the Tribunal for being heard afresh and in accordance with law. All contentions of both sides in relation to these applications are kept open.

5] We would expect the Tribunal to give some priority to the stay Application since they pray for the above mentioned reliefs. We would expect the Revenue not to enforce the demand till at least the two applications seek dispensation of the condition of pre-depsoit of stay are heard and disposed of in accordance with law pursuant to our direction. We order accordingly.

6] The Appeal is disposed of in these terms. No costs.

(S. P. DESHMUKH, J.) **(S.C. DHARMADHIKARI, J.)**

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