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

CUSTOMS APPEAL NO.43 OF 2015

BMM Ispat Limited ... Appellant
versus
The Commissioner of Customs, Central Excist and Service Tax ... Respondent

AND
CUSTOMS APPEAL NO.48 OF 2015

Gandhar Oil Refinery (I) Limited ... Appellant
versus
The Commissioner of Customs (Preventive) ... Respondent

AND
CUSTOMS APPEAL NO.78 OF 2015

Gupta coal India Pvt.Ltd. ... Appellant
versus
The Commissioner of Customs (Preventive) Mumbai. ... Respondent

AND
CUSTOMS APPEAL NO.81 OF 2015

Finolex Industries Limited ... Appellant
versus
The Commissioner of Customs, Pune ... Respondent

Mr.Darius Shroff, Sr.Advocate with Mr.Prakash Shah and Mr.Jas Sanghavi i/by PDS Legal for Appellant in CUAPP No.48/2015.

Mr.V.Sridharan, Sr.Advocate with Mr.Prakash Shah & Mr.Jas Sanghavi i/by PDS Legal for Appellant in CUAPP Nos.78/2015 and 81/2015.

Mr.Prakash Shah with Mr.Jas Sanghavi i/by PDS Legal for Appellant in CUAPP No.43/2015.

Mr.Pradeep S. Jetly with Mr.J.B.Mishra for Respondents in CUAPP Nos.43/2015, 48/2015 and 78/2015.

Mr.A.S.Rao for Respondent in CUAPP No.81/2015.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 16 November 2015

PC :

1. In all these matters, the applications for interim stay and holding the recovery proceedings in abeyance have been dealt with by the Customs, Excise and Service Tax Appellate Tribunal's West Zonal Bench (`Tribunal'). The Appellants before us are aggrieved by the order of Tribunal directing the Appellants to pay substantial amounts running into crores of rupees as pre-condition for the stay and suspension of recovery proceedings. In other words, waiver of the condition of pre-deposit on such terms has been questioned by the Appellants.

2. Mr.Shroff and Mr.Sridharan, learned Senior Advocates appearing for the Appellants would urge that the

Appellants have made out an arguable point. The matter is imminently arguable because it was pointed out by the Appellants that Chennai Bench of the Tribunal in case of Star Coal Limited has found that it is not possible to agree with another Bench of the Tribunal and the view taken therein. It has, therefore, recommended that the papers should be placed before the President so as to constitute a larger Bench of the Tribunal for resolving the complex legal issues.

3. It has been informed by the learned Senior Advocates that the larger Bench of the Tribunal has indeed been constituted and it has commenced the hearing of the case referred to it.

4. On the other hand, Mr.Jetly for the revenue, supports the impugned order of the Tribunal. He submits that the Appellants have dragged on the matter inasmuch as in one of the cases, stay order is passed in the month of December-2014 and to be precise on 14 December 2014 but till November-2015, no request to set aside the same was made. Therefore, the conditional order does not suffer from any legal infirmity or perversity requiring interference in our appellate jurisdiction. The appeal, therefore, be dismissed.

5. We have heard both sides and found that on a miscellaneous application for rectification of the order of stay,

the Tribunal has passed further order on 25 February 2015. In that order, the Tribunal's attention has been invited to the view of co-ordinate Bench at Chennai in the case of Tamilnadu Generation and Distribution Company Limited so also the reference order dated 18 November 2014 and requesting it that there is need to modify the stay order initially passed on this subsequent development.

6. However, what we have seen from both the orders is that Bangalore Bench of the Tribunal took a particular view and later on Chennai Bench disagreed with it. The referral order of Chennai Bench is also extensively referred in the memo of appeal before us and a copy of the same is annexed at Pages 278 to 294 of the paper book. The issue involved is classification of coal imported by Appellants and whether that is bituminous coal falling under Customs Tariff Notification CTH-27011200 as claimed by the Department or steam coal falling under Notification CTH-27011920 as claimed by the Appellants.

7. We find that the question or the issue was arguable. Now that there are rival contentions and equally differing views of the Benches of the Tribunal, then, all the more this was not a case for imposition of any condition of pre-deposit. The waiver application should have been granted without imposing any conditions. If the larger Bench of the Tribunal is to resolve the matter, then all the more, without expressing any opinion on the

merits of the controversy, so also on the point whether mere reference to larger Bench should necessarily result in total waiver and unconditional stay, we are of the view that interest of justice will be served if each of these appeals are allowed. The impugned orders of the Tribunal are quashed and set aside. There will be an unconditional waiver of the requirement of pre-deposit. The condition in that behalf need not be adhered to. There will be an unconditional stay of the recovery of tax pending appeals. However, we clarify that we have not expressed any opinion on the afore referred question or the controversy arising on account of differing views of the Benches of the Tribunal. All contentions in that behalf are kept open. It would be open for the revenue to seek a modification of this order in the event the Tribunal's Zonal Bench is unable to take up the appeals for hearing and final disposal expeditiously.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

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