

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 2855 OF 2016

Larsen & Toubro Limited

... Petitioner

Vs

1. The Union of India & Ors.

... Respondents

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

Mr. Pradeep S. Jetly with Mr. Jitendra B. Mishra for the
Respondents.

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

MONDAY, 28TH MARCH, 2016

P.C. :

1. By this petition under Article 226 of the Constitution of India the petitioner seeks quashing and setting aside of an order-in-original dated 29th January, 2016.

2. Ordinarily, this Court would not be required to interfere with an order-in-original and which in a given case could be said to be appealable but the facts and circumstances being undisputed, we are entertaining this Writ Petition.

3. The petitioner Larsen & Toubro Limited engaged, *inter-alia*, in the manufacture and supply of heavy engineering equipment and machinery such as Heat Exchangers, Pressure Vessels, Boilers etc. falling under Chapter 84 of the Central Excise Tariff Act, 1985, were proceeded against in the following circumstances.

4. An order-in-original dated 31st January, 2012, was passed by the second respondent demanding a sum of Rs.32,39,35,223/- with interest under Rule 6(3) of the CENVAT Credit Rules, 2004, for alleged use of common input services in the manufacture of exempted goods. A copy of this order is at Annexure-C. An appeal was filed against this order before the Customs, Excise and Service Tax Appellate Tribunal along with a stay application seeking waiver of the condition of pre-deposit of the remaining dues and recovery and on condition of depositing Rs.50 lakhs, the balance dues and demand was held in abeyance.

5. This order of the Tribunal has been continued undisputedly till date.

6. The petitioners have been exporting various engineering equipment and machinery and claiming rebate on payment of appropriate duty. They have cleared the excisable goods for export and as enumerated in paragraph 10. Since these were export transactions the petitioner thought that they are earning valuable foreign exchange for the country and would, therefore, be entitled to certain benefits, concessions and rebates. The petitioner, therefore, approached the authority and filed rebate claims.

7. True it is that this authority is distinct, namely, the respondent No.3. Before him the rebate claims were filed, but the complaint of the petitioner is that after a personal hearing this Assistant Commissioner passed an order on 29th January, 2016, and what he could not do directly, he achieved it indirectly by appropriating or adjusting the amount of the demand originally confirmed but stayed by the Tribunal. Meaning thereby, he allowed the rebate only to the extend of Rs.3,17,73,690/- in cash and Rs.1,61,923/- by way of credit in the CENVAT account. He purported to reject the other claim for rebate and restricting it in

such manner that the balance sum which could not be recovered on account of the stay granted by the Tribunal, that would reach the Government coffers. It is such an order and the exercise of power in the above manner which is impugned in this Writ Petition.

8. Mr. Shah learned counsel appearing on behalf of the petitioner submits that the course adopted was held to be legally impermissible in the case of the very petitioner. Relying upon an order passed on 22nd February, 2016, in Writ Petition No. 2099 of 2016, *M/s. Larsen & Toubro Ltd. vs. Union of India & Ors.*, Mr. Shah would submit that the issue raised in the present petition is identical and stands covered in favour of the petitioner and against the respondents by this judgment.

9. On two occasions, we enquired from Mr. Jetly appearing for the respondents as to how any distinguishing feature can be culled out and if so, that must be placed before the Court. Mr. Jetly with his usual persuasive ability was unable to lay hands on any materials which would enable the respondents and equally this Court to distinguish the matter from the earlier order.

10. In the light of the above and going by the judgment delivered in this very petitioner's case, we quash and set aside the impugned order, copy of which is at Annexure A to the petition. The refund claim shall now be granted and the respondent shall not insist on compliance with clause (b) of the operative order at page 21 of the paper-book. That direction and to this extent stands quashed and set aside.

11. We are mindful of the fact that the judgment and order of this Court was delivered much after the impugned order. The impugned order is dated 29th January, 2016, whereas the Division Bench in the petitioner's case is dated 22nd February, 2016. But, we expected the officers to save precious time of this Court in not requiring it to pass a detailed order and judgment by withdrawing the impugned condition / clause. That is not forthcoming as we find that officers after officers are reluctant to take decisions for the consequences might be drastic for them. No officer is acting independently and following judgments of this Court, but waiting for the superiors to give them a nod. Even the superiors are reluctant given the status of the assessee and the

quantum of the demand or the refund claim. We are sure that some day we would be required to step in and order action against such officers who refuse to comply with the Court judgments and which are binding on them as they fear drastic consequences or unless their superiors have given them the green signal. If there is such reluctance, then, we do not find any enthusiasm much less encouragement for business entities to do business in India or with Indian business entities. Such negative reactions / responses hurt eventually the National pride and image. It is time that the officers inculcate in them a habit of following and implementing judicial orders which bind them and unmindful of the response of their superiors. That would generate the right support from all, including those who come forward to pay taxes and sometimes voluntarily. Hereafter if such orders are not withdrawn despite binding Division Bench judgments of this Court that would visit the officials with individual penalties, including forfeiture of their salaries until they take a corrective action. If any approval or nod is required from superiors that should also be granted expeditiously and while obeying the court orders, the officers can always reserve the Revenue's rights to challenge them in appropriate legal proceedings. A copy of this

order be sent to the Secretary in the Ministry of Finance, Government of India and the Chairman, Central Board of Excise and Customs. We are constrained to observe as above simply because repeated suggestions to Mr. Jetly so as to persuade the officers to withdraw the orders impugned in the petition of their own did not meet any favourable response.

12. The Writ Petition, accordingly, stands disposed of.

G.S. KULKARNI, J.

S.C. DHARMADHIKARI, J.