IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6270 OF 2015

Diageo India Private Limited ... Petitioner
versus
The Union of India and others ... Respondents

Mr.Shreedharan, Senior Advocate, with Mr.Prakash Shah i/by PDS Legal for Petitioner.

Mr.Pradeep S. Jetly for Respondents.

CORAM : S.C.DHARMADHIKARI AND
G.S.PATEL, JJ.

DATE : 25 January 2016

PC :

1. After having heard both sides and finding that there is no reason to present this writ petition, but as the learned Senior Advocate submits that the Tribunal's understanding of the provisions would create difficulties and hurdles in maintaining an appeal, that we deem it proper to issue a clarification.

2. As is apparent from the order impugned in the writ petition dated 27 October 2014 of the Bench of Customs, Excise and Service Tax Appellate Tribunal, Mumbai, that the value at

which the goods were imported by the Petitioner-Appellant herein, was under challenge before the Customs authorities. The Assessing Officer passed certain order on 10 May 2013 holding that the value of the goods imported by the Petitioner should be enhanced and directed that all pending provisional assessments be finalized accordingly. The Petitioner being aggrieved by such order approached the Lower Appellate Authority. The Lower Appellate Authority passed an order on 3rd June 2014 concluding that while deciding the value of identical goods, consideration should be given to the different commercial levels or different quantities and accordingly directed the adjudicating authority to redetermine the value by taking into consideration the above factors. The emphasis on Rule 4 of the Customs Valuation Rules, 2007, thus, was subject matter of the challenge by the Petitioner-Appellant in both appeals.

3. We are really not concerned with this in the present petition because the Tribunal does not hold that the appeal would not lie against such order of the Lower Appellate Authority. The question was of making any pre-deposit or compliance with that condition for entertaining the appeal of the Petitioner on merits. The argument was that there is no quantification of duty liability in the order of Assessing Officer as also the First Appellate Authority/Lower Appellate Authority. Therefore, there is no necessity of making any pre-deposit.

4. The argument was that this requirement does not arise for any compliance and, therefore, should not be applied. The Revenue argued to the contrary and stated that quantification of the duty is yet to be done by the Assessing Officer and, therefore, the appeal is premature. However, the Revenue further argued that as per the amended provisions of law, the Petitioner is required to make pre-deposit of 10% of the duty in pursuance of the Appellate Commissioner's order.

5. If such an appeal as was brought by the Petitioner-Appellant was indeed premature, we do not see any reason for the Tribunal discussing the ambit and scope of Section 129(E) of the Customs Act, 1962. What could have been done by the Assessing Officer in compliance of the directions to recompute was not the issue. The re-computation that was directed to be done by him by the Lower Appellate Authority came to be challenged. It was that exercise of the Lower Appellate Authority which was faulted and having found that it does not result in any demand of duty, that the appeal was brought without complying with the pre-deposit. If it was premature, as was essentially to be found, then all discussion in paragraphs 5 and 6 is irrelevant.

6. After having heard Mr.Shreedharan appearing for the Petitioner-Appellant, we are of the view that it is not

necessary to deal with and decide any larger controversy. Mr.Jetly would like us to do so. However, after having noted the essential controversy in the appeal and when the assessing authority is yet to recompute the liability and determine the demand, we deem it appropriate to direct that the Tribunal shall restore the appeal of the Petitioner to its file and decide it in accordance with law and without insisting on a pre-deposit. The condition of pre-deposit is waived in the peculiar facts and circumstances. The appeal shall be decided uninfluenced by anything that is observed in the impugned order and in accordance with law. The Tribunal shall apply its mind afresh and pass a reasoned order upon hearing both sides. All contentions of both sides are kept open.

7. The writ petition is disposed of in these terms. No order as to costs.

(G.S.PATEL, J.) (S.C.DHARMADHIKARI, J.)

MST