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

CUSTOMS APPEAL NO. 76 OF 2016
WITH
NOTICE OF MOTION NO. 2343 OF 2016

Gandhar Oil Refinery (I) Ltd.	}	Appellant
versus		
The Commissioner of	}	
Customs (Import)	}	Respondent

WITH
CUSTOMS APPEAL NO. 74 OF 2016
WITH
NOTICE OF MOTION NO. 2345 OF 2016

Kushal N. Desai	}	Appellant
versus		
The Commissioner of	}	
Customs (Import)	}	Respondent

WITH
CUSTOMS APPEAL NO. 77 OF 2016
WITH
NOTICE OF MOTION NO. 2346 OF 2016

Vivek Sah	}	Appellant
versus		
The Commissioner of	}	
Customs (Import)	}	Respondent

WITH
CUSTOMS APPEAL (L) NO. 24 OF 2016
WITH
NOTICE OF MOTION (L) NO. 2365 OF 2016

Rajiv Parekh	}	Appellant
versus		
The Commissioner of	}	
Customs (Import)	}	Respondent

WITH
CUSTOMS APPEAL (L) NO. 25 OF 2016
WITH
NOTICE OF MOTION (L) NO. 2410 OF 2016

Sah petroleums Ltd. (now known as GP Petroleums Ltd.)	**}**	**Appellant**
versus		
The Commissioner of Customs (Import)	**}**	**Respondent**

WITH
CUSTOMS APPEAL (L) NO. 22 OF 2016
WITH
NOTICE OF MOTION (L) NO. 2431 OF 2016

Apar Industries Ltd.	**}**	**Appellant**
versus		
The Commissioner of Customs (Import)	**}**	**Respondent**

Mr. Darius Shroff – Senior Advocate with Mr. Prakash Shah and Mr. Jas Sanghavi i/b. M/s. PDS Legal for the appellants in all appeals.

Mr. Swapnil Bangur with Ms. Shalaka Gujar-Karande for the respondent in all appeals.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- SEPTEMBER 26, 2016

P.C. :-

1. In all these appeals, the only contention raised before us by Mr. Shroff, learned senior counsel appearing for the appellants is that though miscellaneous applications were filed by the appellants and claiming provisional release of the goods seized, the tribunal, on the understanding of the assesses as also the Revenue, decided to take up all the appeals for final disposal. The

understanding was that no interim or ad-hoc order or direction be issued but the questions and arising from the factual controversy between the parties be settled once and for all. The findings must govern all the issues and on merits. Once this was the understanding between the parties and the tribunal was aware of it, then, it was obliged to pass a reasoned order dealing with all contentions and on the merits of the controversy. Instead, the tribunal, by a cryptic and virtually unreasoned order, made a short shrift of the matter. It has abdicated its duty as a last fact finding court. This is, according to Mr. Shroff, no way of deciding an appeal finally.

2. He submits, therefore, that the sole question and which is substantial question of law is enough for admission and disposal of these appeals finally.

3. On the other hand, Mr. Bangur submits that it is the case of the appellants themselves that the order-in-original dated 5th March, 2014 was appealed and a stay application was filed before the tribunal. That stay application was disposed of and a pre-deposit order was passed. Thereafter, the appellants are aggrieved by the alleged refusal to retest the sample and rejection of the request for cross examination of chemical examiner. Therefore, they filed a writ petition in this court. Then, they

deposited the amount under the stay order. The private laboratories mentioned in this court's order were to draw fresh samples. In all this process, the seized goods, which are stated to be hazardous waste, are lying and at no point of time, an urgency was exhibited for their release or for the disposal of the matter expeditiously. Therefore, Mr. Bangur would submit that no grievance can be raised at this stage by the appellants/assessees.

4. We are not as much concerned with the merits of the controversy, but the manner of disposal of the appeals by the tribunal. With the consent of both sides, we admit these appeals on the following substantial question of law:-

> "Whether in the facts and circumstances of the case, the appellate tribunal is right in passing the order after five months twenty days from the date of hearing contrary to the judgment of this court in the case of *Shivsagar Veg. Restaurant vs. Assistant Commissioner of Income Tax, Mumbai* [2009(13) STR 11 (Bom.)] and *Emco Ltd. vs. Uniion of India* [2015 (19) ELT 28 (Bom.)]?"

5. With the consent of both sides, we dispose of these appeals finally.

6. The tribunal was aware that though some requests were made and of the nature noted in great details by the appellants in the memo of appeals, on the date when the parties appeared before the tribunal, there was a request before it to take up the appeals themselves. We have seen from page 307 of the paper

book in Customs Appeal No. 76 of 2016 that the tribunal was hearing the matters styled as Application Nos. C/MA(ORS)93484 to 93486 of 2015. These were filed in Appeal Nos. C/86919, 86944 and 86917 of 2014. The miscellaneous applications and of the above description and style were before the tribunal and they, according to the tribunal, prayed for provisional release of goods, which were imported. They were taken up for disposal on three dates. The tribunal refers to the order of this court in Writ Petition No. 5309 of 2014 disposed of on 13th April, 2015. The matters were argued at length, according to the tribunal itself. The issue involved is noted in para 3 and that is whether the goods imported by the appellant, namely, Rubber Processing Oil (RPO) are hazardous or non-hazardous? Then, the tribunal refers to various reports placed and the submissions of both sides. Thereafter, the tribunal records a suggestion in the final order passed on 3rd July, 2015 that the samples need to be analysed and after they are drawn in the presence of both sides by a laboratory. The matter would be taken up on priority basis by that laboratory. The tribunal was scheduled to hear the matter after the analysis report is received.

7. Brief written submissions are also tendered by the parties. However, what one notes is that on the further date, namely, 29th

July, 2015, the tribunal takes up the case. The Assistant Commissioner addressed a letter on 7th July, 2015 requesting one laboratory and after referring to the contents of that letter, by consent of both sides, the tribunal directs that the samples be drawn and sent to this laboratory, namely M/s. Ultra Tech Environmental Consultancy and Laboratory. The tribunal stipulated 15 days for that purpose. Then, the tribunal took up the matter on 20th August, 2015. On 20th August, 2015, it granted 15 days further time.

8. From the record, it is then pointed out that the tribunal, instead of adverting to the above material and the written submissions, has passed an order, which is now impugned, but after five months of the date of the last hearing. The grievance is that the tribunal heard the matter on 7th January, 2016 and after these voluminous materials on record, without in any manner adverting to them or the rival contentions, the final order has been passed. The final order upholds the view taken that the imported products should be subject to the provisions of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2008. The appeals were dismissed. The test reports were challenged, but the tribunal comes to the conclusion that they are reliable. Thus, what is concluded is that the

samples have been subject to a valid test. The testing procedure need not be subjected to a cross examination by the appellants, as the credibility of the test is not in question and non-expert cannot be in a position to query on technicalities. The tribunal virtually concluded the issues as are raised, though debatable, by observing that the Rules provide sufficient guidance and justify the action under sections 111 and 112 of the Customs Act, 1962.

9. We are not happy with the manner in which the tribunal has dealt with these appeals. If detailed contentions were noted and in the earlier paragraphs with the reliance by parties on case law, the appeals emphasising the prejudice by refusal of the adjudicating authority to allow a cross examination of the official who carried out the test and parties rely on the tribunal's interim orders, whether all of them have an impact and to what extent has not been satisfactorily concluded. The tribunal has not, beyond one paragraph, adverted to the factual exercise and which was permitted by the tribunal by its interim orders. By consent, certain directions were issued and what has resulted therefrom and whether that aids and assists the tribunal in arriving at the final conclusion has not been adverted to. We do not find any reference to these aspects. What facts and circumstances have been carefully examined has not been

clarified. Once we are not in agreement with the manner in which the tribunal has dealt with the appeals, then, we have no alternative but to quash and set aside the impugned order. The tribunal should focus its attention on the core issue, must refer to all the factual matters, including any findings by the laboratories after a test of the samples, the rival contentions and whether the legal provisions, including the Rules having a bearing or impact on the same should be clearly indicated. The tribunal must assign reasons for the conclusion that it reaches either way. Surely, the tribunal cannot deal with the contested issues in the manner done in the present case.

10. The impugned order is, therefore, quashed and set aside. The appeals stand restored to the file of the tribunal now to be disposed of finally and on merits. The tribunal need not waste its time in passing any interim orders. Both sides concede that the appeals can be disposed of finally and none of them is interested in placing additional documents or facts on record. The only document that the tribunal can refer is a brief synopsis of the written submissions, if at all required and brought forward by the parties. The tribunal, however must pass a detailed order uninfluenced by the impugned order.

11. We expect the tribunal to take up these appeals expeditiously, as both sides are agreed that the import is of January, 2013 and thereafter, the seized goods are lying without any provisional release as well. Since the parties have agreed for final disposal of the appeals so that the legal and factual issues can be decided once and for all, we do not think that the tribunal should keep any interim application pending. If possible, the tribunal shall take up these appeals for expeditious disposal and endeavour to dispose of the same preferably by 31st December, 2016.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**