IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2251 OF 2015

Cenzer Industries Ltd. … Petitioners/Appellants
v/s
The Income Tax Officer 5(1)(3) and others … Respondents

Mr Deepak Tralshawalla i/b Mr V.S. Hadade for Petitioners / Appellants.

Mrs S.V. Bharucha for Respondents.

CORAM : M.S. SANKLECHA AND B.P. COLABAWALLA JJ.

DATE : 13th JANUARY, 2016

P.C.:-

1. This Petition under Article 226 of the Constitution of India challenges order dated 27th August 2012 of the Commissioner of Income Tax refusing to grant stay, orders dated 13th November 2013 under section 226(3) of the Income Tax Act 1961 attaching the Petitioners' various bank accounts and recovery of tax by the Revenue taking six post dated cheques aggregating to Rs.1.20 crores. This Petition was filed as Petitioners' Miscellaneous Application dated 15th July 2013 seeking to rectify the order dated 12th June 2013 of the Income Tax Appellate Tribunal (Tribunal) which

was pending with the Tribunal. Mr Deepak Tralshawalla, learned counsel appearing for the Petitioners states that the Miscellaneous Application has now been dismissed. In the above view, it is clear that the amounts deducted are payable today subject to the result of the appeal filed from the orders of the Tribunal which are adverse to them. Therefore, the reliefs as sought for do not survive.

2. The Petitioners had given to the Office of the Revenue six post-dated cheques, aggregating to Rs.1.20 crores towards the recovery of tax dues of which the details are as under :-

S.No.	Cheque No.	Date	Name of the Bank	Amount (Rs)
1	258	14.11.2013	Canara Bank, Panaji Branch, Goa	25,00,000
2	259	25.11.2013	Canara Bank, Panaji Branch, Goa	25,00,000
3	260	04/12/13	Canara Bank, Panaji Branch, Goa	20,00,000
4	261	12/12/13	Canara Bank, Panaji Branch, Goa	20,00,000
5	262	20.12.2013	Canara Bank, Panaji Branch, Goa	15,00,000
6	263	25.12.2013	Canara Bank, Panaji Branch, Goa	15,00,000
			Total	1,20,00,000

3. The Revenue has already encashed cheques at Sr.Nos.1 to 3 above. So far as Serial Nos.4 to 6 were concerned, it was the

Petitioners' case that Miscellaneous Application in respect of the order of the Tribunal dated 12-6-2013 which was adverse to the Petitioners and awaiting disposal. Therefore, this Court by order dated 3rd March 2014 granted ad-interim relief to the Petitioners by way of direction to the Revenue not to present the cheques at Sr.Nos.4 to 6 hereinabove on the Petitioners furnishing fresh cheques / revalidating the old ones before the expiry of the validity of the cheques at Sr.Nos.4 to 6. This is so as the cheques at Sr.Nos.1 to 3 above had already been encashed.

4. Mr Tralshawalla, learned counsel for the Petitioners states that the fresh cheques for the aggregate amount of Rs.50,00,000/- at Sr.Nos.4 to 6 hereinabove have been issued to the Respondent – Revenue and the validity of these cheques has not yet expired. In the above view, there is no warrant to continue the ad-interim orders. It is open to the Revenue to encash the cheques aggregating to Rs.50,00,000/- which have been deposited by the Petitioners with the Revenue.

5. Needless to state, the Petitioners' Appeal against the orders of the Tribunal dated 12th June 2013 which is pending admission will be decided on its own merits and the payments made

would be subject to the result of the Appeal / Appeals.

6. In the above view, Mr Tralshawalla, learned counsel for the Petitioners, seeks leave to withdraw the Petition. Petition is disposed of as withdrawn.

(B.P.COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**