IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No.15 of 2015 (O&M)
Date of decision:January 20, 2016

Commissioner of Central Excise, Rohtak
……Appellant

vs.

M/s Voice Telesystem

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sunish Bindlish, Advocate for the appellant.
Mr. Amar Pratap Singh, Advocate, Mr. R.K.Hasija, Advocate and Mr. S.J.Singh, Advocate for the respondents.

Mr. Jaiender Saini, Advocate for the respondent in STA No.21 of 2015.

Ajay Kumar Mittal,J.

1. This order shall dispose of STA Nos. 15, 20 to 22 and 28 of 2015 and CEA Nos.34, 43, 41 and 48 of 2015 as learned counsel for the parties are agreed that the issue involved in all these appeals is identical. However, the facts are being extracted from STA No.15 of 2015.

2. STA No.15 of 2015 has been preferred by the appellant-revenue under section 35G of the Central Excise Act, 1944 (in short, "the Act") read with section 83 of the Finance Act, 1994 against the final order dated 10.12.2014, Annexure A.5 in appeal No. ST 1664/2010, passed by the

Customs, Excise and Service Tax appellate Tribunal, New Delhi (in short, “the Tribunal”) claiming following substantial question of law:-

> “Whether Hon'ble CESTAT was right in holding that as per the third proviso to Section 35C(2A) of the Central Excise Act, 1944, it has got the power to grant extension of stay beyond 365 days from the initial grant of an order of stay?”

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent assessee company was engaged in providing business Auxiliary service w.e.f November 2002 to M/s BSNL. Later on, it got itself registered for the category of business auxiliary service as per Section 65 of the Finance Act, 1994 and was not paying service tax under the service tax provisions. Investigation in the matter was carried out on the basis of information that the respondent was a channel partner of M/s BSNL and was engaged in the promotion of marketing of its services since November 2002 without getting itself registered for service tax. The respondent did not disclose the fact of providing this service to the department. In response to the letters dated 10.5.2008 and 11.9.2008 issued by the department, the assessee submitted that it received an amount of ₹ 1,18,78,093/- from BSNL during the period from April 2007 to March 2008. Hence a Show Cause notice was issued to it on 3.10.2008, Annexure A.1. The case was adjudicated by the Additional Commissioner and vide order dated 29/30.9.2009, Annexure A.2, the demand was confirmed alongwith interest. A penalty of ₹ 12 lacs was also imposed. Aggrieved by the order, the respondent-assessee filed appeal before the Commissioner (Appeals) which was rejected vide order dated 16.8.2010, Annexure A.3. The assessee filed appeal before the

Tribunal. Vide order dated 4.7.2011, Annexure A.4, the Tribunal granted stay in the matter. As the period of 365 days had lapsed, the assessee again filed application for extension of stay. The Tribunal vide order dated 10.12.2014, Annexure A.5 extended the stay for a period of six months. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the parties.

5. In this bunch of appeals, the solitary question of law arising for adjudication is whether the Tribunal is empowered to extend the interim order beyond the specified maximum period prescribed under Section 35C (2A) of the Act?

6. Reference is made to the statutory provision contained in Section 35C(2A) of the Act before omission of three provisos by Finance (No.2) Act, 2014 effective from 6.8.2014, which is quoted below:-

> **"35C (2A)** The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:
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> **Provided** that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:
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> **Provided** further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.
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> **Provided** also that where such appeal is not disposed of within the period specified in the first proviso, the Appellate Tribunal may, on an application made in this behalf by a respondent and on being satisfied that the delay in disposing of the appeal is not attributable to such party, extend the

> period of stay to such further period, as it thinks fit, not exceeding one hundred and eighty-five days, and in case the appeal is not so disposed of within the total period of three hundred and sixty-five days from the date of order referred to in the first proviso, the stay order shall, on the expiry of the said period, stand vacated."

7. It would be expedient to explore the legislative history of the said provision. Section 35C of the Act provides for the orders that may be passed by the Tribunal. It was amended by Section 140 by the Finance Act, 2002 with effect from 11.5.2002 whereby sub section 2A was inserted as under:-

> "(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:
>
> Provided that where an order of stay is made in any proceedings relating to an appeal filed under sub section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:
>
> Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated."

8. Section 98 of the Finance Act, 2013 had further amended Section 35C(2A) of the Act with effect from 10.5.2013 wherein a third proviso was added in the following terms:-

> "Provided also that where such appeal is not disposed of within the period specified in the first proviso, the Appellate tribunal may, on an application made in this behalf by a party and on being satisfied that the delay in disposing of the appeal is not attributable to such party,

> extend the period of stay to such further period as it thinks fit, not exceeding one hundred and eighty five days and in case the appeal is not so disposed of within the total period of three hundred and sixty five days from the date of order referred to in the first proviso, the stay order shall, on the expiry of the said period, stand vacated."

9. On plain reading, Sub section 2A of the Act indicates that it would be the endeavour of the Tribunal to hear and decide the appeal within a period of three years from the date of filing of the appeal. The first proviso to sub section 2A of Section 35C of the Act mandates that if any interim order was passed by the Tribunal, the appeal shall be adjudicated within 180 days from the date of such order. According to the second proviso, where the appeal was not decided within 180 days from the date of interim order, the protection prescribed under the interim order would cease to operate upon the expiry of 180 days. The third proviso added by Finance Act, 2013 effective from 10.5.2013 had empowered the Tribunal to grant interim protection to the assessee beyond 180 days wherever the delay in disposal of the appeal before the Tribunal was not attributable to the assessee. The stay was not effective beyond the period of 365 days in total. The issue which requires deliberations remains "whether the assessee is entitled to interim protection even beyond 365 days where delay in disposal of appeal is not attributable to him".

10. Now with effect from 6.8.2014 by Finance (No.2) Act 2014, all the three provisos in sub section (2A) of Section 35C of the Act have been omitted and the bar which was upon the Tribunal to grant limited stay orders has now been removed even though the mandate to decide the appeal within three years as far as possible still continues to operate. In other words, there

is no provision for making any further application for extension of stay. The appeal filed by an assessee needs to be disposed of within a period of three years and stay orders which are passed by the Tribunal would continue to remain in force unless it is limited by the Tribunal itself.

11. The aforesaid provisions have been subject matter of interpretation by various courts.

12. In ***Salasar Steel and Power Limited vs. Commissioner of C.Ex. & Customs,*** 2015(316) ELT 177 (Chhattisgarh), it was observed by the Chhattisgarh High Court that the statutory provision is itself discretionary in nature and its operation would depend upon the facts and circumstances of each case. If despite diligence on the part of the assessee, the Tribunal has not been able to take up the appeal due to pressure of pendency of cases, stay cannot be vacated. It was recorded as under:-

> "7. A bare reading of the statutory provision shows that the appellate Tribunal will endeavour to decide the appeal within a period of three years from the date it is filed. The significance of the words - "where it is possible to do so" cannot be lost site of in interpreting the provision. The statutory provision is therefore not a complete embargo that under all circumstances, notwithstanding any other issue involved, stay has to be mandatorily vacated. In other words, the statutory provision is itself discretionary in nature and its operation would depend upon the facts and circumstances of each case. If the assessee after obtaining stay plays truant to delay disposal, the statutory provision can certainly be invoked. It cannot be invoked if the respondents play truant to delay disposal so that the statutory period would lapse, stay would have to be vacated and the appeal rendered futile. If despite diligence on the part of the appellant, the Tribunal has not been able to take up the appeal

due to pressure of pendency of cases, stay cannot be vacated. Any interpretation to the contrary shall be doing complete violence to the statutory provision and has to be rejected."

13. In ***Commissioner of Central Excise, Meerut vs. Vadafone Essar South Limited,*** 2015(323) ELT 249 (Allahabad), the question before the Allahabad High Court was whether the Tribunal was vested with the power to extend the stay order beyond the specified maximum time limit prescribed in Section 35C(2A) of the Act and if so, to what extent. After discussing the relevant statutory provision and the case law on the point, it was held by the court that there is no provision for making any further application for extension of stay. The appeal filed by an assessee needs to be disposed of within a period of three years and stay orders which have been passed by the Tribunal would continue to remain in force unless it is limited by the Tribunal itself. The relevant observations read thus:-

> "8. Upon the insertion of Section 35C (2A) of the Act, a mandate was given to the Tribunal to decide the appeal within a period of three years "where it is possible to do so".
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> 9. The first proviso to sub section (2A) of Section 35C of the Act indicates, that if any order of stay was passed by the Tribunal in which case, the appellate tribunal shall dispose of the appeal within 180 days. The second proviso stated that if the appeal was not disposed of within 180 days then the stay order would stand vacated upon the expiry of 180 days. The third proviso, which was added by the Finance Act, 2013, further stipulated that when the appeal was not disposed of within 180 days, the appellate Tribunal, if it was satisfied that the delay in disposal of the appeal was not attributable to the assessee, would extend the period of stay for another 185 days and, if the appeal was not disposed of within a total period of

365 days, the stay would stand vacated upon the expiry of 365 days.

10. Section 35C (2A) of the Act and its three proviso was interpreted by various courts including this Court.

11. In Writ Tax No.375 of 2014, ***M/s Garg Industries vs.Union of India through Secretary Revenue and two others,*** decided on 1.7.2014, 2014(307) ELT 432 (All.), a Division Bench of this Court held that the Tribunal in an appropriate case can extend the stay order, but not exceeding 365 days, and that, in an appropriate case, the High Court under Article 226 of the Constitution of India could extend the stay order.

12. In ***L.G. Electronics India Private Ltd. vs. Commissioner of Income Tax***, in Writ Tax No.390 of 2015, decided on 22.4.2015, the Writ Court held that Section 35C (2A) of the Act does not prohibit the appellant in filing a second stay application where the appeal was not disposed of within 365 days and that the interim order would stand vacated upon the expiry of 365 days. The Court further held, that where a fresh stay application was filed, the Tribunal was competent to dispose of such application.

13. In ***Central Excise Appeal No.117 of 2015, Commissioner of Central Excise vs. M/s Mayank and Company,*** decided on 2.7.2015, a Division Bench of this Court held that the interim order passed by the Tribunal under Section 35 C (2A) of the Act had a limited shelf life and that upon the expiry or immediately before the expiry, it would be open to the assessee to move a fresh stay application, which would be decided by the Tribunal in accordance with law.

14. In ***Commissioner of Customs and Central Excise, Kanpur vs. J.P. Transformers,*** 2014 (307) E.L.T. 436 (All.) another Division Bench of this Court held that the Tribunal did not have the power to extend the interim order after the

expiry of 365 days inasmuch as such order could be misused by the assessee.

15. Section 35F of the Act and Section 35C (2A) of the Act were amended by Finance (No.2) Act 2014 w.e.f. 6.8.2014. Section 35F of the Act, as amended by Finance Act 2014, is extracted hereunder:

> "35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.--The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal –
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> (i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the (Principal Commissioner of Central Excise or Commissioner of Central Excise);
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> (ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;
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> (iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:
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> Provided that the amount required to be deposited

under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.

Explanation. – For the purposes of this section "duty demanded" shall include,--

(i) amount determined under section 11D;

(ii) amount of erroneous Cenvat credit taken;

(iii) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004."

16. By the aforesaid amendment the power given to the Tribunal to waive or impose a condition on the pre-deposit of duty has now being dispensed with. Now if an appeal is preferred, the assessee is required to deposit 7.5% of the duty levied before the appeal could be entertained.

17. Section 35C (2A) was amended by the provision of Section 103 of the Finance Act (2) of 2014 as under:

"103. In the Central Excise Act, in Section 35C, in sub-section (2A) the first, second and third proviso shall be omitted."

18. Section 35C (2A) of the Act as amended in 2002 and 2013 makes it apparently clear that the Tribunal was mandated to hear every appeal within a period of three years "where it is possible to do so". These words indicate that though a mandate was given to the Tribunal to decide the appeal within three years, it was not a mandatory provision, but, only a directory provision. Consequently, the first, second and third proviso directing the Tribunal to decide the appeal within 180 days in the first instance or within 365

days in the second instance, failing which, the stay order would stand vacated also has to be read as directory in nature. If the main provision cannot be treated as mandatory, the first, second and third proviso also cannot be treated as mandatory.

19. We are, therefore, of the opinion, that if the Tribunal would not dispose of the appeal within 365 days under the first, second and third proviso of Section 35C (2A) of the Act which was not attributable to the assessee, it would not mean that the Tribunal was divested with its incidental powers in not extending the interim order. The three proviso, in our view, cannot be read as mandatory in nature.

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23. In any case, the three provisos in sub section (2A) of Section 35C of the Act has now been omitted w.e.f. 6.8.2014 and the bar which was upon the Tribunal to grant limited stay orders has now been removed even though the mandate to decide the appeal within three years, as far as possible, still continues to operate.

24. The omission of the first, second and third proviso to Section 35C(2A) of the Act in effect means that there is no provision for making any further application for extension of stay. The omission of the first, second and third proviso would mean that the appeal filed by an assessee needs to be disposed of within a period of three years and stay orders which have been passed by the Tribunal would continue to remain in force unless it is limited by the Tribunal itself."

14. In ***Commissioner of Central Excise, Delhi vs. Brew Force Machine Pvt. Limited,*** 2015 TIOL-1873-HC-DEL-CX-LB, the question before the Full Bench of Delhi High Court was with regard to the power of the Tribunal to grant or extend stay of recovery of demand beyond 365 days from the date when the stay order was initially passed notwithstanding that

the delay in disposal of the appeal was not attributable to an assessee. After considering the relevant case law on the point, the answer was given in the affirmative. It was recorded as under:-

> "Thus, it is clear that in ***Maruti Suzuki (India) Ltd.***, (2014) 362 ITR 215, the Division Bench was of the opinion that as per the earlier provisions before substitution of the third proviso by Finance Act, 2008, Income Tax Appellate Tribunal had power and authority to extend stay of demand beyond 365 days and the provisions as they then existed were to curtail long delays and ensure expeditious disposal of the appellate proceedings, but without curtailment of power to grant stay beyond 365 days. Reliance was placed on the observations of the Supreme Court in ***Commissioner of Customs and Central Excise Vs. Kumar Cotton Mills Pvt. Ltd.*** [2005] 180 ELT 434 (SC), the relevant portion of which was quoted.
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> 8. It is, therefore, clear that the legislature had by Finance Act, 2008 inserted the words, ever if the delay in disposing of the appeal is not attributable to the assessee, in the third proviso to Section 254(2A) of the IT Act, but no such amendment or substitution was made in Section 35C (2A) of the CE Act. The ratio and decision in the case of ***Maruti Suzuki (India) Ltd.,*** therefore, would not be applicable to CEGAT while dealing with an application for stay or their power and jurisdiction to grant stay beyond 365 days, when the assessee is not responsible, under Section 35C (2A) of the CE Act. Therefore, we are unable to agree with the reasoning of the Division Bench of this Court in ***Haldiram India Pvt. Ltd.,*** 2014-TIOL-1965-CESTAT-DEL-LB, observing that the ratio of the aforesaid decision in ***Maruti Suzuki (India) Ltd.*** would apply even to Section 35C(2A) of the CE Act. The decision of the Division Bench in ***Haldiram India Pvt. Ltd.*** is hereby overruled.
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> 9. In view of the limited question involved, we are not

examining other aspects. However, for the purpose of record, we note that a Division Bench of this Court in the case of ***Pepsi Foods Pvt. Ltd.*** (supra) [2015-TIOL-1306-HC-DEL, has struck down the amendments inserted/substituted by Finance Act, 2008 as being violative of Article 14 of the Constitution of India. The question raised before us, however, is different. The reference is accordingly answered..."

15. In ***Pepsi Foods Pvt. Limited now merged with Pepsico India Holding Pvt. Limited vs. Assistant Commissioner of Income Tax and another,*** 2015-TIOL-1306 HC-DEL-IT, the challenge was to the constitutional validity of third proviso to Section 254(2A) of the Income Tax Act, 1961 which was amended to mean that the Tribunal could not grant any further extension of the stay after expiry of 365 days even though the appeals filed by the assessee before the Tribunal were pending and the delay in the disposal of the appeals was not on account of any conduct attributable to the assessee. After considering the relevant statutory provisions and the case law on the point, it was held that the Tribunal has the power to grant extension of stay beyond 365 days in deserving cases. The relevant observations recorded read thus:-

> "23. Keeping in mind the principles set out by the Supreme Court in ***Dr Subramanian Swamy*** (supra), [(2014) 8 SCC 682 (SC)] we need to examine whether the present challenge to the validity of the third proviso to Section 254(2A) can be sustained. This is not a case of excessive delegation of powers and, therefore, we need not bother about the second dimension of Article 14 in its application to legislation. We are here concerned with the question of discrimination, based on an impermissible or invalid classification. It is abundantly clear that the power granted to the Tribunal to hear and entertain an

appeal and to pass orders would include the ancillary power of the Tribunal to grant a stay. Of course, the exercise of that power can be subjected to certain conditions. In the present case, we find that there are several conditions which have been stipulated. First of all, as per the first proviso to Section 254 (2A), a stay order could be passed for a period not exceeding 180 days and the Tribunal should dispose of the appeal within that period. The second proviso stipulates that in case the appeal is not disposed of within the period of 180 days, if the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to extend the stay for a period not exceeding 365 days in aggregate. Once again, the Tribunal is directed to dispose of the appeal within the said period of stay. The third proviso, as it stands today, stipulates that if the appeal is not disposed of within the period of 365 days, then the order of stay shall stand vacated, even if the delay in disposing of the appeal is not attributable to the assessee. While it could be argued that the condition that the stay order could be extended beyond a period of 180 days only if the delay in disposing of the appeal was not attributable to the assessee was a reasonable condition on the power of the Tribunal to the grant an order of stay, it can, by no stretch of imagination, be argued that where the assessee is not responsible for the delay in the disposal of the appeal, yet the Tribunal has no power to extend the stay beyond the period of 365 days. The intention of the legislature, which has been made explicit by insertion of the words – 'even if the delay in disposing of the appeal is not attributable to the assessee'– renders the right of appeal granted to the assessee by the statute to be illusory for no fault on the part of the assessee. The stay, which was available to him prior to the 365 days having passed, is snatched away simply because the Tribunal has, for whatever reason, not attributable to the assessee, been unable to dispose of the appeal. Take the case of delay being caused in the disposal of the appeal on the part of the revenue. Even in that case, the stay would stand vacated on the expiry of 365 days. This is despite the fact that the stay was granted by the Tribunal, in the first instance, upon considering the prima facie merits of the case through a reasoned order.

24. Furthermore, the petitioners are correct in their submission that unequals have been treated equally. Assessees who, after having obtained stay orders and by their conduct delay the appeal proceedings, have been treated in the same manner in which assessees, who have not, in any way, delayed the proceedings in the appeal. The two classes of assessees are distinct and cannot be clubbed together. This clubbing together has led to hostile discrimination against the assessees to whom the delay is not attributable. It is for this reason that we find that the insertion of the expression – 'even if the delay in disposing of the appeal is not attributable to the assessee'– by virtue of the Finance Act, 2008, violates the non-discrimination clause of Article 14 of the Constitution of India. The object that appeals should be heard expeditiously and that assesses should not misuse the stay orders granted in their favour by adopting delaying tactics is not at all achieved by the provision as it stands. On the contrary, the clubbing together of 'well behaved' assesses and those who cause delay in the appeal proceedings is itself violative of Article 14 of the Constitution and has no nexus or connection with the object sought to be achieved. The said expression introduced by the Finance Act, 2008 is, therefore, struck down as being violative of Article 14 of the Constitution of India. This would revert us to the position of law as interpreted by the Bombay High Court in ***Narang Overseas*** (supra), [(2007) 295 ITR 22 (Bom.)] with which we are in full agreement. Consequently, we hold that, where the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to grant extension of stay beyond 365 days in deserving cases. The writ petitions are

allowed as above.

16. The Apex Court in ***Commissioner of Customs & Central Excise, Ahmedabad vs. Kumar Cotton Mills Pvt. Limited,*** (2005) 180 ELT 434, interpreting sub section 2A of Section 35C of the Act as introduced on 11.5.2002 had noticed as under:-

> "6. The sub section which was introduced in terrorem cannot be construed as punishing the assessees for matters which may be completely beyond their control. For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed within the time specified. The reasoning of the Tribunal expressed in the impugned order and as expressed in the Larger Bench matter namely IPCL vs. Commissioner of central Excise, Vadodara (surpa) cannot be faulted. However, we should not be understood as holding that any latitude is given to the Tribunal to extend the period of stay except on good cause and only if the Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Tribunal for reasons not attributable to the assessee."

17. In view of the above, the question posed in para 5 above is answered in the affirmative. Accordingly, it would be concluded that wherever the appeal could not be decided by the Tribunal due to pressure of pendency of cases and the delay in disposal of the appeal is not attributable to the assessee in any manner, the interim protection can continue beyond 365 days in deserving cases.

18. Adverting to the judgments relied upon by the learned counsel for the revenue, it may be noticed that in ***Jagjit Singh and others vs.***

Union of India and others, (2014) 211 DLT 15, while dealing with a case of land acquisition, it was held by a Full Bench of Delhi High Court that the deeming provision of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, "the 2013 Act") is a legal fiction which is created and an imagined situation. Once the state of affairs is imagined as real, the consequences and instances would also have to be imagined as real. That was a case where question was of lapse of acquisition proceedings on account of applicability of Section 24(2) of the 2013 Act. The situation in the present case is different. In ***Commissioner of Customs & Central Excise, Kanpur vs. J.P. Transformers,*** (2014) 307 ELT 436 (All.), it was held by the Allahabad High Court that the entire object and purpose of insertion of sub section (2A) in Section 35C by Section 140 of the Finance Act 2002 w.e.f 11.5.2002 and the third proviso by Finance Act, 2013 would stand defeated if the waiver of pre-deposit is granted indefinitely. In ***Garg Industries vs. Union of India,*** (2014) 307 ELT 432 (All.), it was held by the Allahabad High Court that it was not open to the Tribunal to extend the stay to cover a period exceeding three hundred and sixty five days. This however would not exclude in an appropriate case the power of the High Court under Article 226 of the Constitution of India to pass a protective order provided the court comes to the conclusion that the delay in the disposal of the appeal was not attributable to the conduct of the party which had obtained an order of stay. In view of the consistent opinion of all other High Courts and the observations of the Apex Court as noticed herein above, we are unable to subscribe to the aforesaid approach of the Allahabad High Court and record our dissent.

19. In view of the legal position enunciated above, while dismissing the appeals, we direct that the appeals pending before the Tribunal shall be decided expeditiously within a period of six months from the date of receipt of a certified copy of this order.

(Ajay Kumar Mittal)
Judge

January 20, 2016 **(Raj Rahul Garg)**
'gs' **Judge**