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

CUSTOM APPEAL NO. 41 OF 2016

WITH

NOTICE OF MOTION No. 1371 OF 2016

The Principal Commissioner of Customs (General) ...**Appellant**

Versus

Durga Clearing Pvt.Ltd. ...**Respondent**

Mr. Pradeep S. Jetley, for the Appellant.

Mr. Prakash Shah, and Mr. Jas Sanghavi, i/b PDS Legal, for the Respondent.

CORAM : ABHAY S. OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 28 August 2017

ORDER :

1. Heard the learned Counsel appearing for the

Appellant and the learned Counsel appearing for the Respondent.

2. The challenge in this Appeal is to the judgment and order dated 8 July 2015 passed by the Customs, Excise and Service Tax, Appellate Tribunal (for short "***Appellate Tribunal***"), West Zonal Bench, at Mumbai.

3. Few factual aspects need to be reproduced for the purposes of dealing with the submissions. The Respondent was holding a Customs Broker Licence governed by the provisions of Customs Broker Licensing Regulations, 2013 (for short "***CBLR, 2013***"). In exercise of powers under Regulation 19(2) of CBLR, 2013, the licence of the Respondent was suspended by an order dated 19 December 2013. The order of suspension was directed to continue till the disposal of pending enquiry continued under Section 20 of CBLR, 2013. This order was subjected to a challenge before the Appellate Tribunal. The Appellate Tribunal observed that the licence was suspended since 19 December

2013, which order was continued under the order dated 13 January 2014. The Tribunal observed that the time limit prescribed by the CBLR, 2013 for conclusion of enquiry was not adhered to by the Customs Authority and therefore, the Appellate Tribunal by the impugned order, set aside the order of suspension and allowed the Respondent to function as Customs House Agent pending the completion of enquiry.

4. On the earlier date, we had called upon the learned Counsel appearing for the Appellant to appraise the Court on the present status of the enquiry. Accordingly, a Chart has been tendered across the Bar by the learned Counsel appearing for the Appellant. The Chart shows that after the present Appeal for challenging the impugned order dated 8 July 2015 was filed by the Appellant on 10 August 2015, as late as 5 October 2016, the Assistant Commissioner of Customs submitted an Enquiry Report. The Report was belatedly served upon the Respondent on 5 April 2017 and was granted personal hearing on 17 April 2017. It is stated that on 28 April 2017, the Respondent was not

present. Thus, the Chart shows that even till today, no order is passed on the basis of the report. The enquiry report was belatedly submitted on 5 December 2016. As stated earlier, on 19 December 2013, the Commissioner of Customs suspended the licence of the Respondent. After hearing the Respondent, by order dated 13 January 2014, the suspension order was continued. An Enquiry Officer was appointed on 11 February 2014. Enquiry did not proceed till 25 June 2015, when the Enquiry Officer was replaced. Ultimately, the Report was submitted on 5 October 2016. As stated earlier, there was a delay even in serving a copy of the Enquiry Report to the Respondent.

5. Therefore, we find no fault in the finding of fact recorded by the Appellate Tribunal that considering the enormous delay involved, the order of suspension cannot be continued. In fact, there is a gross delay in concluding the enquiry for which there is no explanation. Even as of today, no final order has been passed on the basis of the Enquiry Report.

Therefore, there is no reason to interfere with the findings of fact and ultimate order passed by the Tribunal. No substantial question of law arises. The Appeal is dismissed.

6. We make it clear that the order of the Tribunal and order of this Court confirming the order of Appellate Tribunal will not influence the concerned authority dealing with the Enquiry Report. An appropriate order shall be passed in accordance with law independently of this order.

7. Notice of Motion No. 1371 of 2016 does not survive and the same is disposed of.

[RIYAZ I. CHAGLA J.] **[ABHAY S. OKA, J.]**