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

CENTRAL EXCISE APPEAL NO. 114 OF 2015

M/s. BPL-BBC Joint Venture .. Appellant

v/s.

The Commissioner of Service Tax,
Mumbai -II .. Respondent

Mr. V. Sridharan, Senior Counsel a/w Mr. Prakash Shah and Mr. Jas Sanghvi i/b PDS Legal for the appellant
Mr. Swapnil Gangur a/w Mr. Sham Walve for the respondent

CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.

DATED : 3rd JULY, 2017

P.C.

1. The present appellant had filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), before the order in original is passed. The appeal was filed along with the application for condonation of delay and the application for waiver of pre-deposit of the amount.

2. The CESTAT found the reasons given for condonation of delay to be sufficient and condoned the delay, however, directed the

applicant to deposit the service tax as demanded in the Show-cause Notice dated 26.02.2010 and 08.04.2011 within a period of eight weeks. The said order was passed on 21.11.2014. It appears that the appellant did not deposit the said amount. As the appellant did not deposit the said amount, the CESTAT dismissed the appeal under order dated 13.7.2015.

3. Mr. Sridharan, learned Counsel submits that the discretion has not been exercised judiciously by the Tribunal. Even the order in original is an ex-parte order, without affording reasonable opportunity to the appellant. Even, the service of Show-cause Notice itself was in dispute. The learned Counsel submits that the substantial question of law as framed in the appeal does arise in the present matter.

4. The learned Counsel for the respondent submits that the Tribunal had granted sufficient time to the appellant to deposit the amount. The appellant failed to deposit the amount. No illegality has been committed by the Tribunal while passing the impugned order. The order in original is also not challenged in the present

appeal.

5. It appears that the final order in appeal has been passed by the Tribunal after the filing of the present appeal. The present appeal was filed against the order passed by the Tribunal directing the appellant to deposit of amount. Be that as it may, the appeal was filed against the order in original on contentious issues. The main contention of the appellant is that even the service of Show-cause Notice was not made. The order in original is an ex-parte order.

6. To test the *bona fides* of the appellant, on the last date we had asked the learned Counsel for the appellant as to whether the appellant is ready to deposit the amount as directed by the Tribunal. The learned Counsel, on instructions, states that the amount as was directed by the Tribunal by way of pre-deposit would be deposited by the appellant within a reasonable time.

7. Considering the *bona fides* shown by the appellant, we are inclined to exercise discretion in favour of the appellant.

8. In the light of the above, we pass the following order :-

ORDER

(a) The appellant shall deposit the amount as directed by the CESTAT under order dated 21.11.2014 within a period of six weeks from today.

(b) On the deposit of the amount as directed above, the order dismissing the appeal shall stand quashed and set aside and the appeal shall be restored to its original position.

(c) It is made clear that deposit of the amount within the period stipulated is condition precedent.

(d) The appeal is allowed in view of the above terms. No Costs.

(A.M. BADAR, J.) **(S.V. GANGAPURWALA, J.)**