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

CENTRAL EXCISE APPEAL NO. 180 OF 2016

Commissioner of Central Excise **...Appellant**

Versus

M/s. Mukand Limited **...Respondent**

Ms. P.S. Cardozo, for the Appellant.

Mr. Karansingh Shekhawat, a/w Mr. Siddhant Sanghavi, i/by P.V. Patankar, for the Respondent.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 14 December 2017

ORDER :

1. This Appeal under Section 35G of the Central Excise Act, 1944 ("***the Act***" for short) challenges the order dated 3rd June 2014 passed by the Customs, Excise & Service Tax

Appellate Tribunal ("***the Trubunal***" for short). By the impugned order dated 3rd June 2014, stay granted earlier in terms of Section 35C(2A) of the Act was extended by following the decision of the larger bench of the Tribunal in ***IPCL Vs. The Commissioner of Central Excise, Vadodara***[1].

2. Ms. Cardozo, the learned Counsel appearing for the Revenue urges the following question of law for reconsideration :-

> "Whether in the facts and circumstances of the case was the Tribunal justified to grant further extension of stay to the respondent when the CESTAT has no powers to extend the stay beyond 365 days in view of the section 35 C of the Central Excise Act, 1944?"

3. The above issue is no longer *res integra*. This Court has in the case of ***The Commissioner of Central Excise Vs. M/s.***

1 ***[169] ELT pg. 267***

Mahindra Navistar Automatives[2] rendered on 8th February 2016 and ***Commissioner of Central Excise Vs. Crompton Greaves Ltd***.[3], has held that the Tribunal has power to extend the *interim* stay granted beyond the period of 365 days from the date of its grant even in the face of Section 35C(2A) of the Act. This on the basis that the Tribunal is not denuded its power to extend the stay in the larger interest of justice. Nothing has shown to us which would indicate that the delay in disposal of the Appeal by the Tribunal was on account of the Respondent

4. It may be pointed out that an identical provision found in the third proviso to Section 254(2A) of the Income Tax Act, 1961 came for consideration before this Court in ***Narang Overseas (P) Ltd. Vs. ITAT***[4] and in ***CIT Vs. Ronuk Industries Ltd***.[5]. This Court has held that the ITAT has jurisdiction to extend the stay beyond the period of 365 days in the third proviso to Section 254(2A) of the Income Tax Act, 1961.

2 ***Central Excise Appeal No. 268 of 2014***

3 ***2016(338) ELT 29 (Bom.)***

4 ***295 ITR 22***

5 ***333 ITR 99***

5. In the above view, as the issue raised herein stands concluded by the decision of this Court, no substantial question of law has been raised.

6. Hence, the Appeal is dismissed. No order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**