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

CUSTOMS APPEAL NO. 89 OF 2015

GKN Sinter Metals Pvt. Ltd. } Appellant
versus
Union of India and Ors. } Respondents

Mr. Kayval Shah i/b. Mr. Prafulla B. Shah for the appellant.

Mr. Pradeep S. Jetly with Mr. Jitendra B. Mishra for the respondents.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- MARCH 20, 2017

P.C. :-

1 Having heard the learned counsel appearing for the appellant, we do not think that the concurrent orders, namely that of the Commissioner of Central Excise and Customs (Appeals) and that of the tribunal call for any interference. They do not raise any substantial question of law. The right of appeal conferred in the litigant, namely, the assessee could have been availed of on complying with the condition prevailing when that right of appeal was assured. That right of appeal, which was vesting with a condition attached and which was not complied with. That condition is also just, fair and reasonable and does

not render the right of appeal illusory. This appeal is devoid of merits and it is dismissed.

2 At this stage, a request is made that in the event the appellant deposits, within a period of four weeks, the amount directed in the tribunal's order, the appeal before the Commissioner (Appeals) may be directed to be revived and for adjudication on merits. This request is opposed by the Revenue on the simple ground that six years have lapsed from the date of the order passed by the tribunal. One is not aware whether any records are maintained in relation to the issue in question.

3 Having heard both sides on this point, we find that though the request made is belated and highly unreasonable, not to cause any injustice and in the peculiar facts, we direct that in the event, within a period of four weeks, the amount is deposited, the first appellate authority [Commissioner (Appeals)] shall revive the appeal on its file and hear and decide the same on merits. No extension of time will be granted for depositing the amount. If the amount is not deposited within the stipulated time, all consequences in law shall follow.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)