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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CUSTOM APPEAL NO.8 OF 2017

The Principal Commissioner of
Customs (Import-I) ...Appellant
vs.
Borsara Machines ...Respondent

Mr.Pradeep S Jetly for the appellant
Mr.Prakash Shah a/w Mr.Jas Sanghvi i/b PDS Legal for the respondent

CORAM : A.S.OKA, &
A.K.MENON,JJ.
DATE : OCTOBER 3, 2017

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Heard the learned counsel appearing for the appellant. By order dated 18th September 2017, this Court had directed that the appeal will be heard at admission stage on the question of law incorporated in the said order.

2 The appellant-revenue preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short `the Appellate Tribunal'). By the order dated 25th June 2015 which is impugned before the Appellate Tribunal, the Commissioner of Customs in the Appeal preferred by the respondent interfered with the order dated 25th March 2015 passed by the Assistant Commissioner of Customs. The Assistant Commissioner of Customs had directed the appellant to pay interest on the refund claimed at the rate of 6% per

annum for the period from 8th August 2013 to 8th December 2014. The Commissioner of Customs held that the interest will be payable by the appellant from the date immediately after the expiry of three months from the date of receipt of the application for refund by the department. In the appeal preferred by the appellant-revenue, there was stay application filed which has been rejected by the impugned order dated 7th November 2016.

3 The material part of the impugned order reads thus:

> "3 On perusal of the records, we find that the first appellate authority has set aside order-in-original dated 25.3.2015 and allowed the appeal of the respondent in claiming the interest of the belated refund of the deposits made by them with the Customs department. On a specific query from the Bench as to why the department seeks stay of the operation of the impugned order, learned departmental representative submits that the department needs to pay interest. In our view, the application filed by the Revenue for staying the operation of the impugned order is without any merits inasmuch, it has not gone into any of the criteria of the provisions of Section 129E of the Customs Act,1962 for granting stay of the operation of the impugned order.

> 4 In view of the foregoing, the application filed for staying the operation of the impugned order is dismissed."

4 The submission of the learned counsel for the appellant is that there is no prima facie consideration of the issues raised by the appellant in the pending appeal before the Appellate Tribunal and the application has been dealt with in a cursory manner without recording prima facie findings. The submission of the learned counsel for the respondent is that the Appellate Tribunal is not expected to write a detailed Judgment while dealing with the application for waiver and in fact, in the present case, the Appellate Tribunal has recorded that the application has no merit.

5 We have considered the submissions. It is true that while deciding the application for stay and/or for waiver, the Appellate Tribunal is not expected to write detailed Judgment. This Court has repeatedly held that prima facie consideration of merits of the case made out by the appellant is required to be made while deciding such application. It is true that the Appellate Tribunal is not expected to write elaborate Judgment for coming to the conclusion whether prima facie case exists or not. In the facts of the case, the order does not reflect the application of mind by the Appellate Tribunal as regards the existence of prima facie case or otherwise.

6 Therefore, in our view, the Appellate Tribunal has not done its duty and therefore, the application made by the appellant will have to be reconsidered by the Appellate Tribunal in the light of observations made in this order.

7 Hence, we pass the following order:

(I) The impugned order dated 25th October 2016 is quashed and set aside and the application No.C/S/92914/16-Mum in Appeal No.MUM-CUSTM-SMP-80/2015-16 is restored to the file of the Appellate Tribunal;

(II) The Appellate Tribunal shall hear and decide the application afresh in the light of the observations made in this order;

(III) We are sure that the Appellate Tribunal will give necessary priority to the hearing of the application afresh;

(IV) All contentions on merits are kept open;

(V) The appeal is partly allowed on above terms with no order as to costs.

(VI) Pending Notice of Motion does not survive and the same is also disposed of.

(A.K.MENON,J.) (A.S.OKA,J.)