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

CENTRAL EXCISE APPEAL NO.10 OF 2017

GOL Offshore Limited
a Company duly registered under the
Companies Act, 1956, having its
office at Energy House,
81, Dr. D.N. Road, Mumbai-400 001. .... Appellant

- Versus -

The Commissioner of Service Tax,
Mumbai-I, having his office at 14th
Floor, Air India Building,
Nariman Point, Mumbai-400 021. .... Respondent

Mr. V. Sridharan, Senior Counsel with Mr. Prakash Shah & Mr. Jas Sanghavi i/by M/s. PDS Legal for the Appellant.

Ms P.S. Cardozo with Mr. Ruju R. Thakker for the Respondent.

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

DATE : FEBRUARY 13, 2017

P.C:

1. This Appeal was argued on the last date and it was placed today for passing orders.

2. The appeal is directed against orders passed on 1-3-2016 and 31-8-2016. It is unfortunate that this Court has to devote its valuable and precious time when the matter is at an interlocutory stage.

3. The present appeal raises two substantial questions of law. We need not go into the merits for Questions (c) and (d) would partly touch the same.

4. It is common ground that the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench at Mumbai was approached by the present appellant when it was denied certain benefit and in relation to service tax. The charge of service tax and for a certain period is in issue. The Show Cause Notice dated 15-12-2010 calls upon the assessee to show cause as to why an amount of Rs.10,53,46,914/- should not be recovered as service tax under the category of 'Supply of Tangible Goods for Use' service for the period 7-7-2009 to 31-3-2010.

5. There is a reply forwarded to this Show Cause Notice and subsequently there is another Show Cause Notice of 21-10-2011 when the appellant was called upon to show cause as to why a sum of Rs.10,01,92,523/- paid under 'Mining Service' should not be recovered as service tax under the above category for the period 1-4-2010 to 31-3-2011. Even to this Show Cause Notice a detailed reply was furnished. A personal hearing was also held and subsequently an Order-in-Original was passed on 11-10-2012.

6. The demands were confirmed. An appeal was, therefore, carried to the Appellate Tribunal. There was a Stay Application and in which interim stay of the recovery pending the appeal was sought. A conditional order directing the appellant to deposit a sum of Rs.5 crores and report compliance was passed thereon on 25-3-2013. Aggrieved thereby, an appeal was preferred to this Court. The appeal was pending. But in the meanwhile since the compliance was not reported, the Tribunal dismissed the appeal before it, without adjudication on merits.

On 24-5-2013 this order was passed.

7. Thereafter, the Tribunal came up with a Judgment on such issues as are involved in the present case in the case of ***M/s. Petronet LNG Ltd. v. Commissioner of Service Tax, New Delhi*** {*2016 (46) S.T.R. 513 (Tri. Del.)*}. That decision was pronounced on 24-10-2013.

8. The appeal that was filed in this Court came up for hearing on 13-10-2014. That is why reliance was placed on the Judgment in ***M/s. Petronet LNG Limited's*** case (supra) by the appellant's counsel. This Court found that instead of going into the controversy on merits, interest of justice would be served if an opportunity is granted to the appellant to seek a modification of the impugned orders. That is how the application for modification, styled as Miscellaneous Application/Restoration Application was filed. The Tribunal was requested to recall its conditional order. The Tribunal was initially pleased to recall this order. It recalled it and directed restoration of the appeal without insisting on pre-deposit. However, what transpired

thereafter is that the modification application, which was listed and filed by the appellant, came to be entertained by the Tribunal. It passed a further order on 31-8-2016, but relying, according to the appellant, incorrectly on its earlier conditional order dated 25-3-2013. Though we have the benefit of a very detailed argument and a compilation of case law, we are of the opinion that this appeal can be allowed on a very short point. The Tribunal has proceeded on the assumption that it is still empowered in law to insist on compliance of its initial order dated 25-3-2013. It found that the conditional order operated by itself, the appeal of the appellant was dismissed for non-compliance and the appellant approached this Court but had not been allowed to argue the matter on merits by this Court. Instead it was permitted to seek a recall of the Tribunal's conditional order. The appellant was given an opportunity to seek a modification of the Tribunal's interim order and not insist on any pre-deposit. The events transpired during the pendency of the proceedings and after the initial order were emphasised on which relief from this Court was sought by the appellant.

Instead of directing its attention to that aspect of the matter, the Tribunal went back to the procedural formality of compliance of the conditional order. It insists that the Tribunal's earlier order must be complied with. That is evident from the order passed on 31-8-2016 when it speaks in para 7 in the following terms:-

> "In the present instance, even though the decision of the Tribunal, *viz., Petronet LNG Ltd. v. Commissioner of Service Tax {2013-TIOL-1700-CESTAT-DEL}*, may not favour Revenue, but that would be subject to the requirement that the appeal stands restored. The judgments cited by the learned Authorised Representative would place the applicant within the ambit of the amended provisions of section 35F of Central Excise Act, 1944. The pre-deposit mandated in section 35F of Central Excise Act, 1944 is the same as that directed by this Tribunal on the earlier occasion. We, therefore, do not find any justification for modifying the terms of pre-deposit. The applicant is directed to deposit Rs.5 crores within eight weeks from receipt of this order and report compliance thereafter latest by 15th November 2016 following which the appeal will stand restored and the plea for raising additional ground sought for in the application shall be taken up thereafter."

We find that in this case and the approach as is evident from the above observations is hyper-technical. We are of the opinion and very firmly that Tribunals such as this are meant to render justice and in accordance with law. They are not established to shut out parties on hyper-technicalities. Once the technicalities have to take a back seat on such issues and which have larger repercussions, then, the Tribunals would be well-advised not to go ahead and insist on compliance with their procedural directions or their interim orders to such an extent as would make it impossible for the appellants to have disposal of their appeals on merits. Even now what we have found is that the Tribunal insists that, pre-deposit as mandated by Section 35F of the Central Excise Act, 1944 is an order prevailing and binds the assessee. It cannot be recalled even when there are subsequent developments. The Tribunal should be aware that just as it has power to impose conditions while passing interlocutory or interim orders, equally there is an inherent and implicit power to modify them in the event the changed circumstances so demand. That is the principle enshrined in Rule 4 Order 39 of the Code of Civil Procedure, 1908 and which is analogous to larger power to grant interim relief. Hence, a conditional order and that too interim in nature can be modified so as to appropriately suit the ends of justice. Without expressing any opinion on the merits of the Tribunal's order but finding that now the issue is arguable and there are again several Judgments and decisions, we direct the Tribunal to restore the appeal on its file. It should not insist on compliance with any pre-deposit or conditional order or direction. Instead it should hear both sides and adjudicate the appeal on merits and as expeditiously as possible. Both the impugned orders stand quashed and set aside accordingly. We clarify that we have not expressed any opinion on the merits of the controversy raised in the appeal. The appeal accordingly stands disposed of.

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