IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.13315 OF 2018
IN/WITH
CENTRAL EXCISE APPEAL NO.15 OF 2013

M/s EMCO Ltd.,
N-104, Additional MIDC,
Jalgaon, Maharashtra
Having registered office at;
F/5, Road No.28,
Wagle Industries Estate,
Thane 400 604 ..APPLICANT/APPELLANT

VERSUS

1. The Union of India,
Through Joint Secretary,
Ministry of Law, Justice
and Company affairs,
Having his office at
Shastri Bhavan, New Delhi

2. Customs, Excise and Service
Tax Appellate Tribunal,
3/4/5 Floor, 34 Jai Center,
P. D. Mello Road, Poona Street,
Masjid (East), Mumbai 400 009

3. Commissioner of
Central Excise, Nashik,
Kendriya Rajaswa Bhawan,
Gadkari Chowk, Old Agra Road,
Nasik – 422 002 ..RESPONDENTS

Mr R. B. Deshmukh, Advocate for applicant/appellant;
Mrs Kalpalata Patil - Bharaswadkar, Advocate for respondents

CORAM : PRASANNA B. VARALE
AND
SUNIL K. KOTWAL, JJ.

DATE : 29th October, 2018

ORAL ORDER:

Heard Mr Deshmukh, learned Counsel appearing on behalf of the applicant/appellant and Mrs Bharaswadkar, learned Counsel appearing on behalf of the respondents.

2. Mr Deshmukh invited our attention to certain factual aspects reflected in the present application, more particularly in para Nos.2, 3, 4 and 5. The sum and substance of the submission is, appeal was filed before this Court and the appellant, while submitting the appeal had not deposited the amount of pre-requisite deposit. The appeal was admitted by this Court on 23rd December, 2013 considering the substantial question of law as formulated in para (a) of the appeal. Insofar as the interim relief is concerned, this Court permitted the appellant to deposit the amount equivalent to 50% of the duty amount which comes to around Rs.2.5 Lacs in this Court within a stipulated period of six weeks from the date of the order of this Court, without prejudice to the right and contentions raised by him in the appeal. The Division Bench then directed the tribunal to proceed with the appeal without insisting on pre-deposit of the amount before it.

3. Mr Deshmukh, learned Counsel for the applicant/appellant invited our attention to the copy of receipt placed on record at Exh.'B' to submit that the applicant/appellant has deposited an amount of Rs. 2,93,206/- in this

Court on 5th February, 2014. He then invited our attention to the subsequent events, namely, orders passed by the authorities. On 10th November, 2017, learned Member of the tribunal passed the order and remitted the matter back to the authority for fresh consideration. Learned Member, by assigning reasons passed the order i.e. the appeal was allowed by way of remand. Subsequently, the Commissioner of CGST and Central Excise, Nashik, on considering all the contentions raised by the parties, arrived at a conclusion that the proceedings initiated against the appellant is not sustainable and ultimately the order was passed on 29th March, 2018 stating thus:-

> "1. I order, in terms of subject remand order of Hon'ble CESTAT, WZB, Mumbai to drop the proceedings initiated vide the show cause notices issued under F. No. V(85)15-04/EMCO/1/Adj/2011 dated 27.01.2011 to M/s. Emco Ltd., N-104, Additional MIDC, Jalgaon.
>
> 2. This order is passed without prejudice to any other action that may be taken against them under the Central Excise Act, 1944 and the Rules made thereunder or under any other Law for the time being in force."

4. Mr Deshmukh, learned Counsel for the applicant/appellant, thus, submits that as the proceedings itself is dropped and this subsequent event post admission of the appeals now makes the appeal infructuous.

5. Mrs Bharaswadkar, learned Counsel for the respondents fairly admits this position in view of the subsequent orders. Mr Deshmukh, then prays for return of the amount deposited in this Court in view of above referred facts.

6. In view of the submissions of learned Counsel appearing on behalf of the respective parties and in view of the reasons stated in the application, the civil application as well as Central Excise Appeal is disposed of accordingly.

(SUNIL K. KOTWAL, J.) **(PRASANNA B. VARALE, J.)**

sjk