Sharayu Khot.

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

NOTICE OF MOTION NO. 838 OF 2016

IN

CUSTOM APPEAL NO. 46 OF 2016

Deepak Kothari ...Applicant/ Appellant

Versus

The Commissioner of Customs & Anr. ...Respondents

Mr. Karl Shroff, with Mr. Arun Mehta, i/by Akshar Laws for the Applicant/Appellant.

Mr. Advait Sethna a/w Ms. Ruju Thakkar, for the Respondents.

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

DATE : 19 October 2018

ORDER :

1. This Motion has been taken out in a pending Appeal

under Section 130 of the Customs Act, 1962 ("***the Act***") challenging the order dated 11st September 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "***the Tribunal***").

2. The Appeal was admitted on 25th September 2017 as giving rise to a substantial question of law.

3. Shri. Shroff, the learned Counsel appearing in support of the Motion seeks to submit that the impugned order of the Tribunal dated 11st September 2015 is unsustainable in law. This as evident from the fact that the Appeal against the same has been admitted. Therefore, penalty of Rs. 10,00,000/- imposed by the impugned order dated 11th September 2015 be stayed till final disposal of the Appeal.

4. We find that the impugned order dated 11th September 2015 dismissed the Applicant's Appeal while upholding the order of the original Authority imposing a penalty

of Rs. 10,00,000/-. The fact that the Appeal has been admitted would not *ipso facto* lead to a stay of the impugned order passed by the Tribunal. The admission of an Appeal only indicates that there is a debatable issue which arises for consideration and the same would be decided at the stage of final hearing of the Appeal.

5. In case, where the orders of the Tribunal are *exfacie* not sustainable such as being in defiance and/or contrary to binding the decisions of Hon'ble Apex Court or this Court and/or other considerations such as breach of natural justice, etc., the Appeal itself would be disposed of at the stage of admission. Alternatively, it would be disposed of expeditiously after giving the opposite party notice that the Appeal is being kept for final hearing. The Affidavit in support of the Motion also does not make out any extra ordinary circumstances such as lack of money, etc. so as to comply with the impugned order of the Tribunal.

6. In the above view, there is no justification to stay the

impugned order dated 11th September 2015 pending the final disposal of the Appeal.

7. Accordingly, the Notice of Motion is dismissed. No order as to costs.

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