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

CENTRAL EXCISE APPEAL NO. 180 OF 2018

Jai Bharat Steel Rolling Mills .. Appellant

v/s.

Union of India & Ors. .. Respondents

Mr. Ashok Singh a/w Mr. R.N. Gaonkar for the appellant
Mr. Sham Walve a/w Mr. J.B. Mishra for the respondents

CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.

DATED : 25th MARCH, 2019

P.C.

1. This appeal under Section 35G of the Central Excise Act, 1944 (the Act) challenges the order dated 11th August, 2014 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

2. The appellant has urged the following question of law for our consideration :-

> *Whether on the facts and circumstances of the case and in law, the Tribunal was justified in directing to make pre-deposit of 35% of duty by the appellant?*

3. The impugned order of the Tribunal dismissed the appellant's appeal for failure to deposit 35% of the disputed tax amount as directed by order dated 27th March, 2014 of the Tribunal. The above deposit was directed in terms of the proviso to Section 35F of the Act, for the purposes of entertaining the appeal on merits.

4. Mr. Ashok Singh, learned Counsel appearing on behalf of the appellant sought to impeach the impugned order on the ground that the pre-deposit could not have been directed in the present facts. However, we were not impressed. The grievance of the appellant could be considered on merits at the final hearing of the appeal, but this is no ground to disturb the order directing pre-deposit. Mr. Ashok Singh, on instructions, states that the amount as directed to be deposited by the order dated 27th March, 2014 would be deposited within a further period of 8 weeks from today i.e. by 20th May, 2019. This to enable the petitioner to contest the appeal on merits.

5. In the above view, the impugned order dated 11th August, 2014 is set aside. Time to make the deposit as directed by order dated 27th March, 2014 of the Tribunal is extended up to 20th May, 2019. On the

appellant depositing the amount of 35% of the disputed tax as directed by order dated 27th March, 2014 to the satisfaction of the Tribunal, the appeal of the appellant before the Tribunal would be heard and decided finally on its own merits. Needless to state that if the petitioner fail to deposit the amount within the above stipulated time i.e. on or before 20th May, 2019, the appeal before the Tribunal would be dismissed.

6. Appeal is disposed of in the above terms.

(M.S. SANKLECHA, J.) **(A. S. OKA, J.)**