IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 232 OF 2020

TBK India Private Limited. … Petitioner.
V/s.
The Union of India and others. … Respondents.

Mr.Prakash Shah with Mr.Jas Sanghavi i/b. PDS Legal for the Petitioner.
Mr.Pradeep S. Jetly, Senior Advocate with Mr.J.B.Mishra for the Respondents.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.

DATE : 13 March 2020.

P.C. :

Heard the learned counsel for the parties. In view of the short question involved, the petition is taken up for disposal.

2. The Petitioner has challenged the order dated 10 May 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal and the order dated 5 July 2012 passed by the Commissioner of Customs (Appeals). By the impugned order, the Tribunal has dismissed the appeal filed by the Petitioner as premature.

3. The Petitioner is a company incorporated under the Companies Act, 1956. The Petitioner is a joint venture of of Tokyo Buhin Kogyo Co. Ltd., Japan. The Petitioner imports certain goods from its joint venture company from Japan. The Petitioner paid royalty to its joint venture partner. The Petitioner had registered under GATT Valuation Cell which was set up in terms of the Circular dated 23 February 2001. The issue was taken up by GATT Valuation Cell and the Petitioner submitted documents pursuant to the questionnaire. The Deputy Commissioner of Customs, GATT Valuation Cell conducted an investigation as per the terms of the Circular and passed an order on 2 March 2006 and then in review on 11 January 2010 taking certain view in respect of royalty payable.

4. The Respondent- Revenue filed an appeal before the Commissioner of Customs (Appeals) against the order dated 11 January 2010. The Commissioner (Appeals) allowed the appeal and set aside the order dated 11 January 2010.

5. The Petitioner filed an appeal before the Tribunal. The Tribunal observed that to render a decision on the goods which are yet to be provisionally assessed would be a premature venture. The Tribunal held that the impact of the impugned order will result in final assessment and, therefore, at this stage, entertaining the appeal would be premature. Accordingly, by the impugned order, the Tribunal dismissed the appeal as pre-mature.

6. After the order was passed, the Commissioner of Customs issued two communications to the Petitioner stating that the Department would proceed for final assessment under section 189 of the Customs Act, 1962 in the light of what is held by the Commissioner (Appeals). Hence, this petition.

7. The learned counsel for the Respondents raised a preliminary objection that an appeal is maintainable from the order passed by the Tribunal and writ petition should not be entertained in view of availability of an alternate remedy. He submitted that final assessment is yet to be completed.

8. The learned counsel for the Petitioner submitted that the Tribunal has not decided the appeal on merits but has dismissed the same as premature. The learned counsel tendered compilation of decisions wherein the Tribunal has entertained the appeals on merits against the order passed in the identical circumstances. These are Commissioner of Customs (Import) v. Chasys Automotive Components Pvt.Ltd.[1]; Caprihans India Pvt.Ltd. v. Commissioner of Customs [2]; Mondelez India Foods Pvt.Ltd. v. Commissioner of Customs (Import)[3] ; Inspiron Engineering Pvt.Ltd. v. C.C.(A), JNCH, Nhava Sheva[4]; Kirloskar Abara Pumps Ltd. v.

1 2019 (366) ELT 161 (Tri Mum)

2 2017 (357) ELT 856 (Tri Mum)

3 2017 (357) ELT 813 (Tri Mum)

4 2017 (357) ELT 801 (Tri Mum)

Commissioner of Customs (Import)[5] ; Commissioner of Customs v. Ferodo India Pvt.Ltd.[6]; WEP Peripherals Ltd. v. Commissioner of Customs[7]; Commissioner of Customs v. Prodelin India (P) Limited[8]; and Syed Yakoob v. K.S.Radhakrishnan[9]. He submitted that even the appeal filed against the order passed by the Tribunal on merits has been dismissed by the Apex Court in one of the cases. He submitted that if such a view taken in the impugned order is permitted to be taken by the Tribunal, it will unseat the consistent view taken by the Tribunal where the Tribunal has entertained appeals arising from GATT Valuation Cell via the Commissioner (Appeals).

9. In the impugned order passed by the Tribunal, we do not find any reference to the other orders passed by the Tribunal. The Division Bench of this Court in the case of *Mercedes Benz India Pvt.Ltd. v. Union of India*[10] has stressed upon the Tribunal the need to give deference to the decisions of its co-ordinate benches. It is not discernible whether the Petitioner has drawn attention of the Tribunal to the orders passed in the above mentioned cases and whether the Tribunal had the benefit of examining these decisions. Since the Tribunal has dismissed the appeal as premature and that *prima facie* we find that in identical circumstances the Tribunal has taken a different view, we are inclined to entertain this petition, more

5 2017 (346) ELT 148 (Tri Mum)
6 2008 (224) ELT 23 (SC)
7 2008 (224) ELT 30 (SC)
8 2006 (202) ELT 13 (SC)
9 1964 (5) SCR 64
10 2010 (252) ELT 168 (Bom.)

particularly in the law laid down by this Court in the case of *Mercedes India Ltd*. However, before concluding finally on the issue, we find that it will be appropriate to let the Tribunal examine the above cited decisions rendered by the co-ordinate benches and then take an informed decision whether the appeal is premature or otherwise.

10. Accordingly, the impugned order passed by the Tribunal dated 10 May 2019 is quashed and set aside The Appeal No.C/995/2012 is restored to the file of the Tribunal. The Petitioner will place the compilation of the above decisions and any other decisions for consideration of the Tribunal on the question of maintainability of the appeal. The Tribunal after considering these decisions will take a decision regarding maintainability of the appeal. Needless to state that if the Tribunal holds that the appeal is maintainable, the Tribunal shall decide the appeal on its own merits.

11. We make it clear that we have set aside the impugned order and remanded the proceedings only on the above ground and we have not concluded finally on the legal and factual aspects which are kept open.

12. Writ petition is disposed of in the above terms.

(ABHAY AHUJA, J.) (NITIN JAMDAR, J.)