

(2012) 04 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 18459 of 2011

Classic Microtech Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19, 226

Customs Act, 1962 — Section 17

Customs Tariff Act, 1975 — Section 3

Citation : (2012) 194 ECR 175 : (2012) 282 ELT 487 : (2012) 2 GLR 1691

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Devan Parikh with Mr. Nirav P. Shah, for the Appellant; Y.N. Ravani, for the Respondent

Judgement

Bhaskar Bhattacharya, ACJ.

1. By this Special Civil Application, the petitioners have prayed for the following relief :

(a) This Honourable Court may be pleased to declare that the imports made by the Petitioners are eligible to exemption under Notification No. 4/2006 and are not subject to CVD.

(b) That this Honourable Court may be pleased to direct that the petitioners be permitted to clear their zircon sand without payment of CVD till the Honourable Tribunal disposes of their appeal.

(c) In the alternative, this Honourable Court be pleased to quash and set aside the order dated 16-9-2011 passed by the learned Commissioner (Appeals) at Annexure "O" to the petition.

(d) That pending hearing and final disposal of this petition, this Honourable Court be pleased to stay the operation and implementation of order of the Commissioner (Appeals) dated 16-9-2011 at Annexure "O" to this petition.

(e) That pending hearing and final disposal of this Petition, this Honourable Court be pleased to restrain the respondents, their servants and agents from levying any CVD on the import of Zircon sand imported by the Petitioners.

(f) Ex parte ad-interim relief as prayed for in terms of para (d) and (e).

(g) This Honourable Court be pleased to grant such other and further reliefs as are deemed just and proper in the facts and circumstances of this case

The case made out by the petitioners may be summed up thus :

1. The petitioner No. 1 is a Company incorporated under the Companies Act and the petitioner No. 2 is a shareholder and Chairman of the petitioner No. 1-Company.

2. The petitioners are in the business of manufacturing glass frit. The principal and most expensive raw material to manufacture glass frit is Zircon.

3. Zircon as a mineral exists in natural source in sand at various places. However, this type of sand has various other minerals in it. The operators in this regard carry out a very simple process called "spiralling process" by which, this type of sand is separated by measuring its density. Thus, the particular variety of sand, so detected, continues to be the natural sand with all its impurities but those are segregated by identifying the density. Sand with such particular density would contain more Zircon as compared to sand of different density. However, even such sand would remain in its original natural state with all its impurities and all other ingredients, minerals etc. It is this variety of sand, which is packed by foreign suppliers and purchased by various units like the present petitioners.

4. For years, this type of sand has been classified as "Zircon Ore" under the Customs Tariff as Item No. 2615 10 00 in the name of "Zircon Ore and Concentrate".

5. As far as Central Excise duty is concerned, Notification No. 4/2006 exempts "Ores" falling under Chapter 2601 to Chapter 2617 from payment of Excise Duty. If a product is imported, the same is subject to CVD "additional duty of customs" u/s 3 of the Customs Tariff Act, which is equivalent to the duty of excise leviable on such products manufactured in India.

6. In the light of the aforesaid notification, which exempts excise duty on ores. Zircon-sand was being cleared for years on end by the entire industry without payment of CVD.

7. In the normal course of business, the petitioners sought to import various consignments of Zircon sand from Iluka Resources Limited, Australia. The petitioners imported three different consignments. The first consignment was of 78.420 MT of Zircon Sand, which was entered under Bill of Entry No. 3460449 dated May 10, 2011 at ICD Sabarmati, Ahmedabad. The petitioners also imported one more consignment of 104.64 M. Tons of same material which has been entered under Bill of Entry No. 3744416 dated April 19, 2011.

8. With regard to the first consignment under Bill of Entry No. 3460449 dated May 10, 2011, the samples were drawn on May 26, 2011. In the test report of the samples, a strange view was sought to be taken that Zircon content is 98.3% and the product thereof is Zircon concentrate.

9. The petitioners had received the certificate of analysis along with the material, which shows Zircon content was only 66.2% whereas Silicon content was 32.3%. The same is consistent with the test report. However, the department has added up Zircon Dioxide and Silicon to arrive at a conclusion that the Zirconium silicate content is 98.3%.

10. In the above context, the petitioners addressed a letter dated June 4, 2011 to the Deputy Commissioner of Customs and applied for a retest of the material in the said letter.

11. In order to point out the fact that the product is not a "concentrate" and that in any case, the concentrate is also an Ore and is, therefore, exempt under the relevant notification, which exempts Ore, the petitioners addressed a letter dated June 8, 2011.

12. Instead of dealing with the submissions made before the concerned authority, Bill of Entry was assessed charged CVD at 10% without passing a speaking order.

13. The petitioner, therefore, wrote another letter dated June 9, 2011 requesting for a speaking order. However, without granting any hearing or issuing a show cause notice, the Deputy Commissioner of Customs passed an Order-in-Original No. 138/DC/ICD/2011 dated June 9, 2011 holding that the product in question is "Zircon concentrate" and, therefore, is not exempted under Notification No. 4/2006-CX, dated March 1, 2006.

14. With regard to the second consignment, the department addressed an e-mail to the CHA of the petitioners stating therein that as goods of Bill of Entry No. 3717113 are identical to those of the earlier Bills of entry, it was bound to be "Zircon concentrate". Consequently, the department called for an explanation as to why the consignment under this Bill of Entry should not also be subject to CVD.

15. The petitioners preferred an appeal before the Commissioner [Appeals]. The petitioners also sought retest of the product and the matter was referred to the Chief Chemical Examiner, New Delhi. The Chief Chemical Examiner referred the matter to Indian Rare Earths Limited ("IREL"). IREL gave a detailed reply pointing out that the product is nothing else but Ore. Nonetheless, the Chief Chemical Examiner gave an opinion that the product is "concentrate" without any basis whatsoever.

16. The Commissioner of Appeals, however, passed an order dated September 16, 2011 accepting the decision of the department.

17. Being dissatisfied, the petitioners have preferred an appeal before the

CESTAT.

18. In the past, when the department passed the order, the petitioners filed a Special Civil Application being No. 7625 of 2011 which related to the subject matter of the present petition and a Division Bench of this Court allowed the petitioner to clear Zircon Ore imported by them upon furnishing Bank Guarantee of 25% of the duty claimed and further furnishing a personal bond for the rest of the amount. The said Division Bench imposed a further condition that the petitioners should file an appeal before the Commissioner (Appeals) within two week with a further direction that the said arrangements should continue until the Commissioner (Appeals) decided the issue in question. In the appeal so preferred by the petitioners, as mentioned above, the Commissioner (Appeals) has passed an order against the petitioners. The petitioners, therefore, have, preferred an appeal before the CESTAT against the said order of the Commissioner (Appeals).

19. CESTAT will not be in a position to deal with the future clearance of the consignments imported during the pendency of the appeal, and, therefore, the petitioners have preferred the present writ-application praying for passing necessary orders as by the action of the respondents, the petitioners are unable to run their business if they are asked to pay CVD as demanded.

20. IREL, which is a Government of India Undertaking, is also marketing this very product in India and the petitioners purchase Zircon sand from IREL as well. In the case of IREL itself, a view is taken that this product is being sold as Ore. IREL, avails of exemption under this very Notification No. 4/2006, and clears the same under NIL rate of duty.

21. The primary purpose of filing this petition is to protect the present and future clearance so that the petitioners interests would not be prejudiced till the point is settled. Though appeal lies against the order of the Commissioner (Appeals), the same is not an equally efficacious remedy as compared to this petition. Further, when a central statute is administered differently in different States, it is one of the rarest of the rare cases where this Court should interfere under Article 226 of the Constitution of India.

22. Due to the order of the Commissioner (Appeals), the existence of the petitioners in the field of business is at stake inasmuch as until the Tribunal decides the appeal, they shall be forced to pay duty when other similarly placed competitors in the same field are not required to bear this burden. This inevitable situation will wipe out the petitioners from the field of business. Hence this petition.

2. The writ-petition is opposed by the respondent Nos. 2 and 3 by filing affidavit-in-reply and thereby denying the allegations made in the writ-petition. The defence of the respondent Nos. 2 and 3 may be summed up thus :

1. The writ-application is not maintainable in view of the alternative remedy

available to the petitioners.

2. The petitioners cannot take advantage of the earlier order passed by this Court on July 11, 2011 inasmuch as it was clarified therein that the same was on condition that the petitioner would file an appeal before the Commissioner (Appeals) within two weeks. Since the appeal, so filed, has been disposed of by the Commissioner (Appeals) by passing a final order against the petitioner, the stay order cannot be availed of by the petitioners any further.

3. It is an admitted fact that before the Union Budget of the year 2011, the imported goods of the petitioners were being cleared without charging Additional Duty of Customs (i.e. CVD) and the petitioners had no dispute with the Revenue. The issue now involved is the collection of CVD, which is a result of some changes made by the Government of India in the Union Budget of the year 2011 with regard to goods falling under Chapter 26 of Central Excise Tariff Act. In the Union Budget of the year 2011, in Chapter 26 of the Central Excise Tariff Act, the Government of India has inserted Chapter Note 4, which says, "in relation to product of this chapter, the process of converting ores into concentrate shall amount to manufacture". Thus, Zircon concentrate are now excisable and would attract CVD on import of concentrate. The item, Zircon Sand is also falling under sub-heading 2615 10 00 of Chapter 26 of the Customs Tariff Act, 1975 and thus, new provision of law is applicable to the goods imported by the petitioners with no exception.

4. To give natural justice to the petitioners and to ascertain as to whether the goods imported by the petitioners is Zircon Ore or Zircon Concentrate, representative samples were drawn and sent to Central Excise & Customs Laboratory, Vadodara for testing purpose. The Chemical Examiner, Central Excise & Customs Laboratory, Vadodara has reported that the imported goods are : "Zircon concentrate".

5. The Revenue has assessed the Bill of Entry based on the chemical test report charging CVD and issued a speaking order as provided under sub-para 5 [sic sub-section (5)] of Section 17 of the Customs Act, 1962. The Revenue has, thus, rightly assessed the Bills of Entry of the petitioners to safeguard the government revenue and followed the procedure as laid down in law.

6. The sample drawn from the consignment of the petitioners was sent to CRCL, New Delhi for re-testing. CRCL, New Delhi has reported that the samples were sent to IREL, Kollam, in the State of Kerala for chemical and mineralogical analysis and the result is as under :

Physical appearance : The sample is in the form of light brown coarse powder. It is essentially composed of Zircon & Silica along with small amount of oxides of Titanium, Aluminium and Iron.

Mineralogical analysis Chemical Test Report.

Sample has characteristic of Zircon concentrate.

7. Though Zirconium Ore and concentrates both fall under subheading 2615 10 00 of Chapter 26 of the Customs Tariff Act, 1975, the benefit of the said notification was not available to the petitioners as it is available only to Zircon Ore and not to Zircon concentrate. The language of the notification is very much clear, extending benefit of the notification to only : "Ores" and not to "concentrates". "Concentrate" is liable for payment of CVD by Government of India in view of the amendment in Union Budget 2011 and insertion of new Chapter Note 4 in Chapter 26 of Central Excise Tariff Act.

8. On going through the Chemical Analysis report of Chemical Examiner, Central Excise and Customs, Vadodara and also New Delhi, the Chemical Examiners have categorically concluded that the goods imported by the petitioners were Zircon Concentrate and hence, the benefit of the said notification would not be available to the petitioners which is available only to Zircon Ore.

9. The allegation of the petitioners that the "concentrate" is nothing but "Ore" and hence, is liable for exemption is not legally tenable, and as such, the petition should be dismissed.

3. Subsequently, the respondent Nos. 2 and 3 filed an additional affidavit-in-reply and the statements made therein may be summed up thus:

1. The adjudicating authority has sent the samples to Chemical Examiner of Central Excise and Customs Laboratory at Vadodara by way of test memo No. 2682 dated May 26, 2011 with a specific test query. The Chemical Examiner of Central Excise and Customs Laboratory, Vadodara had given a report dated May 31, 2011 and in the specific reply to the query, it had been clearly opined that it is "Zircon Concentrate".

2. In view of the request made by five different importers, the sample was again sent to the Office of the Central Revenue Control Laboratory, New Delhi for its re-testing of the samples. On September 23, 2011, the report was sent to all the five importers separately.

3. The issue of classification is always a mixed question of facts and law. The Department has decided the issue on the basis of report of Chemical Examiners' Laboratory. Therefore/such disputed questions of facts may not be entertained by way of the present writ-petition. The writ-application is, therefore, liable to be dismissed.

4. Mr. Parikh, learned Senior Advocate appearing on behalf of the petitioners has, at the very outset, submitted before us that in view of the report given by the Chemical Examiner, it is clear that the material in question imported by his clients contains not only Zircon and Sillimanite but also different other minerals. Thus, according to Mr. Parekh, the same cannot be treated as Zircon concentrate but it is Zircon Ore. According to Mr. Parikh, the findings of the concerned officer that it was Zircon Concentrate is a perverse finding of facts even based on the material on record. He, therefore, prays for passing appropriate directions to

protect the interest of his clients, inasmuch as according to him, if his client is required to pay CVD and ultimately, if the petitioners succeed before the Tribunal, there will be no chance of getting back the said amount. In the process, Mr. Parikh continues, his clients will not be able to compete with other manufactures of similar products in the market from the other States who are not asked to pay the CVD. In support of his contention that a writ application under Article 226 of the Constitution is maintainable, Mr. Parikh placed strong reliance upon a Division Bench decision of this Court in the case of *Ambica Mata Yarn Mfg. Co., Baroda Vs. Superintendent of Central Excise, Range IV, Baroda and Others*, .

5. Mr. Ravani, the learned counsel appearing on behalf of the Revenue, has, on the other hand, strongly opposed the aforesaid contention of Mr. Parikh and has contended that the petitioners have alternative remedy and having availed of the same by preferring appeal before the CESTAT, this Court should not entertain this writ application as the question of classification of goods cannot be decided in the present writ application. Mr. Ravani contends that it is the consistent view of the Supreme Court that in case of existence of alternative remedy, a writ petition should not be entertained. Mr. Ravani further contends that an appeal in the CESTAT being pending, any observation made by this Court on the subject matter would prejudicially affect the interest of his client. He, therefore, prays for dismissal of the writ application.

6. Therefore, the question that arises for determination in this writ application is whether in the facts of the present case, this Court should pass any direction on the present application.

7. We first propose to deal with the question whether this court in exercise of writ jurisdiction should entertain this application where the petitioners, the importers, have prayed for interim relief of clearance of the goods without payment of CVD until the adjudication of dispute before the Tribunal below.

8. The question came up for consideration before a constitutional bench of the Supreme Court in the case of *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, where the bench made the following observations :

8. The only point, therefore requiring to be considered is whether the High Court should have rejected the writ petition of the respondent in limine because he had not exhausted all the statutory remedies open to him for having his grievance redressed. The contention of the learned Solicitor-General was that the existence of an alternative remedy was a bar to the entertainment of a petition under Art. 226 of the Constitution unless (1) there was a complete lack of Jurisdiction in the officer or authority to take the action impugned or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural Justice and could, therefore, be treated as void or non est. In all other cases, he submitted, Courts should not entertain petitions under Art. 226, or in

any event not grant any relief to such petitioners. In the present case, he expressly dissented from the reasoning of the learned Single Judge as regards the lack of jurisdiction of the Customs officers to adjudicate regarding the item under which the article imported fell and the duty leviable thereon. Nor was there any complaint in this case that the order had been passed without an opportunity to the importer to be heard, so as to be in violation of the principles of natural justice. The learned Solicitor-General questioned the correctness of the reasoning of the learned Chief Justice in condoning the conduct of the respondent in not moving the Government in revision by taking into account the time that had elapsed between the date of impugned order and that on which the appeal was heard. The submission was that if this were a proper test, the rule as to a petitioner under Art. 226 having to exhaust his remedies before he approached the Court would be practically a dead letter because in most cases by the date the petition comes on for hearing, the time for appealing or for applying in revision to the departmental authorities would have lapsed.

9. We see considerable force in the argument of the learned Solicitor-General. We must, however, point out that the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases : In *Union of India (UOI) Vs. T.R. Varma*, at pp. 503-504 : ((S) AIR 1957 SC 882 at p. 884). Venkatarama Ayyar speaking for the Court said :

It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but as observed by this Court in *Rashid Ahmed Vs. The Municipal Board, Kairana*, , "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs." Vide also *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, . And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Art. 226, unless there are good grounds therefor.

There is no difference between the above and the formulation by Das, C.J., in *The State of Uttar Pradesh Vs. Mohammad Nooh*, at p. 93), where he observed:

.....It must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether

it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

After referring to a few cases in which the existence of an alternative remedy had been held not to bar the issue of a prerogative writ, the learned Chief Justice added:

It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari.

In the result this Court held that the existence of their legal remedies was not per se a bar to the issue of a writ of certiorari and that the Court was not bound to relegate the petitioner to the other legal remedies available to him.

10. The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor-General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus preeminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.

11. The question that we have now to consider is has the discretion which undoubtedly vested in the Court been so improperly exercised as to call for our interference with that order. We might premise this discussion by expressing our opinion on two matters merely to prevent any misunderstanding. First we entirely agree with Chagla, C.J., that the order of the Assistant Collector of Customs in assessing duty at 78 3/4, per cent, or of the Collector of Customs in confirming the same, was not void for lack of jurisdiction. The interpretation they put on the relevant items in the Tariff Schedule might be erroneous, even grossly erroneous, but this error was one committed in the exercise of their jurisdiction and had not the effect of placing the resulting order beyond their jurisdiction. Secondly, as we have already indicated, we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ

petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Art. 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted, to urge that as a ground for the Court dealing with his petition under Art. 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the Judgment of the learned C.J. in *The State of Uttar Pradesh Vs. Mohammad Nooh*, with its reference to the right to appeal being lost "through no fault of his own" emphasizes this aspect of the rule.

(Emphasis supplied by us)

9. Bearing in mind the aforesaid principles, we now propose to apply the same to the facts of the present case.

10. In the case before us, the petitioner has already filed regular appeal before the Tribunal, which is pending adjudication. Thus, it is not a case where the petitioner has accepted the decision of the Commissioner (Appeals) or allowed further appeal to the higher authority as prescribed under law to be barred by limitation.

11. The only question before us is whether during the pendency of the appeal before the Tribunal, the petitioners should be forced to pay the CVD which some other persons similarly placed with the petitioner are not required to pay by virtue of the decisions of the authority situated in a different State on interpretation of the selfsame provisions of law.

12. Under the existing law, so long the decision passed by the Commissioner (Appeals) is not set aside by the higher appellate authority, the petitioner is bound to pay the duty imposed in order to clear the imported goods. Thus, at this stage, there is no alternative remedy prescribed by law by which the importer can release the goods by approaching such authority and obtaining a stay of the duty impugned. Consequently, the only remedy of the petitioner lies by getting a final order in its favour from the Tribunal below or from the further higher authority prescribed by law.

13. On the other hand, the petitioner can also pay the duty imposed and continue with his business and if it is successful in the long run, it will not be required to pay the CVD imposed by the Revenue Authority any further. But so long it is not so successful, it is required pay the CVD and after such payment and consequent release of the articles imported, it is required to run his business. Even if the petitioner succeeds in the end, there is absolutely no chance of recovering the excess amount paid towards CVD because the doctrine of unjust enrichment will come into play unless it decides not to pass on the additional burden to the customers. In other words, the petitioner is required to run its business in a disadvantageous situation by selling its product at a comparable lower profit than the one earned by the other competitors in the field who will clear the same goods from other ports not situated in this State without

payment of the CVD.

14. In such a situation, in our opinion, it is really not a case of existence of alternative statutory remedy but is one where a citizen is complaining violation of Articles 14 and 19 of the Constitution of India at the instance of a "State" within the meaning of Article 12 of the Constitution of India by alleging unequal treatment by a "State" towards him in the field of procuring imported materials for running a business based on different interpretation of selfsame salutatory provision enacted by the Parliament than the one made by the same authority in the ports in India situated in a different State.

15. In the case before us, there is no dispute that until recent past, the Revenue treated the goods in question as "ore". It further appears from record that IREL, another importer of the selfsame article, is not paying any CVD and the Tribunal at Kolkata has in the case of 2002 (139) ELT 352 has adopted the contention raised by the petitioners in this case; however, there is no decision of any Tribunal situated in this State on the above question.

16. We further find that a Division Bench of this court in the past allowed the petitioner to release the goods on payment of 25% of the duty and on execution of a bond to pay the assessed amount if their appeal before the Commissioner (Appeals) failed with a direction to file such an appeal within a specified time. The Revenue had accepted such decision. After the dismissal of such an appeal, since a further appeal has been filed before the Tribunal by the petitioners and there is no decision on the above point by any Tribunal of this State, we are of the view that the petitioners should be permitted to get the order of release of the similar goods during the pendency of the appeal before the Tribunal on the selfsame conditions imposed earlier by a Division Bench of this court which will abide by the decision of the Tribunal.

17. Since the appeal is pending before the Tribunal, we refrain ourselves from making any comment on the merit of the appeal. The above condition proposed by us would protect the interest of both the parties. In passing the aforesaid direction, we are fortified by the following observations of M.P. Thakkar C.J. (as His Lordship then was) in the case of Ambica Meta Yarn Manufacturing Co. Ltd. (supra):

Not ordinarily of course does not mean never. In some cases the High Court might consider it expedient in the interest of justice to do so. For instance, in two types of cases the High Court might interfere (unless the Revenue is prepared to stay the recovery during the pendency of the proceedings before the appellate or revisional authority), viz.:

1. Where the exercise of authorities of other States are accepting the interpretation canvassed by the assessee. In such cases the assessee will not be able to withstand the competition in the market and the industry in the State will suffer serious handicap and may even get mauled;

2. In a case where the product is for being assessed under one entry several years in the past and the department has accepted the position for all these years but abruptly changes its stance without there being any legislative change.

18. In the case before us, a Division Bench of this court having passed similar direction during the pendency of the appeal before Commissioner (Appeals) and such conditions having been accepted by the Customs Authority, we renew the selfsame conditions during the pendency of the appeal before the Tribunal on the above reasons assigned by us.

19. The Tribunal is directed to dispose of the appeal pending before it within a period of three months from today.

Further Order:

20. After this order is pronounced, Mr. Ravani, the learned counsel appearing on behalf of the Revenue prays for stay of operation of the above order. In view of what has been stated above, we find no reason to stay our order. The prayer is, therefore, rejected.