**(2013) 03 BOM CK 0162**

**In the Bombay High Court**

**Case No :** Writ Petition No. 1197 of 2012

Commissioner of Central Excise APPELLANT

Vs

O.N.G.C. Ltd. RESPONDENT

**Date of Decision :** 07-03-2013

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2013) 294 ELT 190

**Hon'ble Judges :** D.Y. Chandrachud, J;A.A. Sayed, J

**Bench :** Division Bench

**Advocate :** A.S. Rao with Jitendra B. Mishra, for the Appellant; Aziz Khan instructed by Divya Shah, Associates, for the Respondent

## Judgement

1. In the present case, the CESTAT had dismissed an appeal of the Revenue on the ground that clearance of the Committee on Disputes had not been obtained. Subsequently, on an application by the Revenue, the appeal was restored by the Tribunal on 20 May, 2011 2011 (271) ELT 576 . The appeal was dismissed on 2 January, 2012 [2012 (282) E.L.T. 513 (Tri.-Mumbai)] on merits. The learned Counsel appearing on behalf of the Petitioner stated that the Revenue has not challenged the order dated 2 January, 2012 which has been accepted. However, these proceedings under Article 226 have been instituted in view of a letter dated 17 December, 2011 of the Union of India in the Ministry of Finance. The letter is addressed to the Commissioner of Central Excise, Raigad Commissionerate and reads as follows:--

Please refer to this office letter dated 20-6-2011 (copy enclosed) issued from file bearing F. No. 390/R/262/09-JC wherein it was clarified that there was no merit in filing the ROM for restoration of appeal in the present case. However, it seems that the application for ROM was filed even before receipt of Board''s clarification in the matter and CESTAT, WZB, Mumbai restored the departmental appeal vide Misc. Order No. M/380/2011-WZB/C-II(EB), dated 20-5-2011. The said miscellaneous order of the Tribunal seems to be bad in law as the Tribunal has erroneously interpreted the Apex Court judgment in the ECU, case to restore the departmental appeal. It is felt that the miscellaneous order may lead to unsettling of all decisions of Committee on Disputes taken prior to 17-2-2011 causing needless litigation in the future.

It is felt that Department is not aggrieved by the said restoration order of the Bombay Bench of CESTAT. However, considering the larger policy issue than the mere fact of department having succeeded in getting this appeal restored, the restoration order needs to be challenged before the Hon''ble High Court on the ground that appeals seeking restoration of dismissed appeals by citing the said Restoration Order as precedence should not be allowed to maintain judicial discipline. Necessary action may accordingly be taken.

This issues with the approval of Member (L&J).

2. We see no reason to entertain the petition. As the law now stands, in view of the judgment of a Constitution Bench of the Supreme Court in Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, , the Committee on Disputes (COD) was held to have outlived its utility consequent upon which the Supreme Court recalled its earlier directions on the subject. The apprehension of the Revenue is that applications seeking restoration of dismissed appeals should not be proceeded with by citing the precedent of the order of the Tribunal dated 20 May 2011 in the present case restoring the appeal. The order of the Tribunal restoring the appeal was passed in the facts of the present case and, in any event, even following the restoration, the appeal has now been worked out. In any event, the law on the subject is now governed by the judgment of the Supreme Court in Electronics Corporation of India Ltd. (supra) delivered on 17 February 2011. Hence, we do not see any reason to entertain the present petition which is accordingly disposed of in terms of the observations made above.