(2014) 06 BOM CK 0057

In the Bombay High Court

Case No : Central Excise Appeal No. 15 of 2013

Jai Bharat Steel Rolling Mills — APPELLANT

Vs

Commissioner of C. Ex. — RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Citation : (2014) 307 ELT 462

Hon'ble Judges : S.C. Dharmadhikari, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : Rahul D. Motkari, Advocate for the Appellant

Judgement

1. The appellant is aggrieved and dissatisfied with the order passed by the Tribunal dismissing an application to modify its earlier interim direction. By the order under challenge delivered on 18th April 2012, the Tribunal dismissed the Miscellaneous Application for modification of its earlier order. Mr. Motkari submits that the modification application has been dismissed without hearing the appellant or the advocate. The order, therefore, breaches the principles of natural justice and this itself is a substantial question of law. Apart therefrom, the direction to deposit the huge sum as a pre-condition for hearing the appeal on merits makes the remedy of appeal wholly illusory. In his submission, therefore, this is a fit where our appellate jurisdiction should be exercised.

2. On perusal of the interim order as also the further order stated to be ex parte, we find no merit in this appeal. On the application for modification of the earlier order, the Tribunal found that it was listed on 17th April, 2012. On that date, a written request was filed to list the application on 18th April, 2012. Therefore, on the appellant''s written request, the matter was postponed to 18th April 2012. On the postponed date, none appeared on behalf of the appellant meaning thereby both the appellant and advocates were absent. In such circumstances, the Tribunal cannot be faulted for proceeding ex parte.

3. Mr. Motkari, then, sought to argue that the interim direction in the earlier

order is too harsh and virtually non-suits the appellant. On perusal of the order delivered on 14th February, 2012, in the appellant''s stay application, we are unable to agree with Shri Motkari that the present appeal raises, any substantial question of law.

4. There is no merit in the contention of Shri Motkari that the demand has been based only on electricity consumption. Prima facie, the Tribunal found that the demand was based on the appellant''s contradictions noted in the books of account. The adjudicating authority, prima facie, took into consideration the other material as well. In these circumstances, the Tribunal found that this is not a case of complete waiver of pre-deposit but a partial one. We do not find that the direction to deposit a sum of Rs. 38,00,000/- out of the total demand of Rs. 2,30,36,528/- can be said to be unreasonable, arbitrary, leave alone capricious, enabling us to exercise our jurisdiction. The appeal does not raise any substantial question of law and it is, accordingly, dismissed. In the event, the appellant deposits a sum of Rs. 38,00,000/- within a period of eight weeks from today and reports compliance, the Tribunal shall revive and restore the appeal to its file and dispose it of on merits and in accordance with law. Failure to do so, would result in the order of dismissal of the appeal not being interfered.