(2014) 06 BOM CK 0197

In the Bombay High Court

Case No : Central Excise Appeal (Lodging) No. 147 of 2014

Jet Airways (India) Ltd. APPELLANT

Vs

Commissioner of Service Tax RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2014) 36 STR 975

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

Bench : Division Bench

Advocate : R.A. Dada, Sr. Advocate, Rohan Shah, Divya Jaswant and Prithvi Chowdhary, i/by Economic Law Practice, Advocate for the Appellant; Pradeep S. Jetly and Suchitra Kamble, Advocate for the Respondent

Judgement

1. This Appeal under Section 35G of the Central Excise Act, 1944 is directed against the order passed by the Customs, Excise & Service Tax Appellate Tribunal (for short CESTAT), Mumbai in Stay Application No. S.T./STAY/96034-96038/13-Mum in Appeal No. S.T./87494-87498/13-Mum, dated 27-2-2014 (2014 (36) S.T.R. 290 (Tri.-Mum.)) whereunder the CESTAT passed a conditional order directing that in the event the Appellant before us deposits a sum of Rs. 147 crores there would be stay against recovery and waiver of balance sum under the order passed by the Commissioner of Service Tax (Order-in-Original). Mr. R.A. Dada, learned Senior Counsel appearing in support of this Appeal, submits that this Appeal raises a substantial question of law for consideration and determination by this Court. He submits that the CESTAT was not justified in directing pre-deposit of huge sum and particularly when there was a strong prima facie case. The basis on which the CESTAT proceeds is that there is no prima facie case. Whereas, it was established and proved prima facie that the point is debatable and arguable. It is not as if the material in that behalf has not been placed by the Appellant before the CESTAT. The Appellant did point out the conclusive findings in the final orders of the CESTAT itself. When the CESTAT had passed several orders in which the ownership of data was held to be essential

pre-requisite for being classified under the taxing entry in question, then, it was not justified in concluding that the point is still open. The CESTAT relied upon a differing opinion of one of it''s member in that behalf. Mr. Dada would submit that in the lengthy order running into several pages the CESTAT has virtually foreclosed the issue. The CESTAT found that its earlier view that the ownership of data is a relevant factor, requires reconsideration. If that was the position and the matter was still at large before the CESTAT itself, then, this was a fit case for complete waiver of pre-deposit and stay of recovery.

2. In the alternative, Mr. Dada submits that it was clear that the material with regard to the financial hardship was placed before the CESTAT, however, it failed to take note of the same. This is not a case where the CESTAT could have gone by the column pertaining to the assets/current assets ignoring liabilities. That there is huge debt and that the Appellants are suffering losses was prima facie clear from the books of account. In such circumstances the CESTAT was in complete error even at this prima facie stage in passing the order under challenge. The matter raises a substantial question of law and this Court, therefore, should admit this Appeal even if it is challenging an interim order.

3. Mr. Dada has relied upon several decisions of the CESTAT and equally of this Court whereunder it was held that there cannot be discrimination in the matter of passing interim orders. When the facts and circumstances are identical, then, distinction cannot be made between two Assessees. That is the foundation on which this Court has reinforced the rule of consistency even in passing interim orders. For all these reasons it is submitted that a substantial question of law is raised and it be answered in favour of the Assessee and against the Revenue and the Appeal be allowed.

4. On the other hand, Mr. Jetly, learned counsel appearing for the Revenue, submits that the matter is brought before this Court at an interlocutory stage. Even if the point is debatable yet the CESTAT has prima facie found that the test, which was evolved earlier or which was applied, is no longer applicable leave alone relevant one. On plain reading of the Entry it is clear that there is no requirement to satisfy the element of ownership. It is the act of providing or accessing the information that is relevant. If that alone is relevant and prima facie, there is no dispute about the manner in which the services have been provided, then, this is a case of evasion or avoidance of service tax liability. The CESTAT was, therefore, justified in imposing the condition of pre-deposit. More so if the financial position as indicated is indeed precarious, then, it would be difficult for the Revenue to recover the amounts which are due and legitimately payable. For all these reasons and when the data provided in the form of Profit & Loss account and balance sheet is not conclusive even on the point of financial hardship, then, the order under challenge does not require any interference. The Appeal does not raise any substantial question of law and it deserves to be dismissed.

5. With the assistance of the learned counsel appearing for the parties we have

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perused the order passed by the CESTAT. The order is passed on an application seeking waiver of pre-deposit. The Appeal before the CESTAT questions the order passed on the show cause notices. What has been alleged against the Appellants is that the Appellants did not pay Service Tax under the Reverse Charge Mechanism. That is amount paid to the Computer Reservation System (for short "CRS") companies under the taxing entry for "Online Information and Database Access or Retrieval Service". The details of show cause notices are set out in paragraph 19 of the present memo of Appeal. The show cause notices are dated 23-10-2008, 23-6-2009, 20-8-2010, 21-10-2011 and 4-12-2012. They pertain to the period commencing from 2003 onwards till 2011-2012.

6. The argument of Appellants in reply to these show cause notices was that the activity undertaken by the CRS Companies is not classifiable under the taxing entry of "Online Information and Database Access or Retrieval Service". It has been pointed out by the Appellants in answer to the allegations in show cause notices that the Appellants have entered into an arrangement with the CRS Companies. That is subject matter of the dispute. There is Global Distribution System (for short GDS) which is a facility developed by various companies such as M/s. Galileo International Partnership USA, M/s. Abacus Distribution Systems Pte. Ltd., M/s. Amadeus Marketing S.A. Spain, M/s. Sabre Travel Information Network USA and others. These companies are CRS companies. The GDS system provides the Travel Agents with ability to make reservations and issue tickets in respect of various Airlines including the Appellant. The CRS Companies transmit the information/data provided by the Appellant in relation to its flights to various Travel Agents across the world through their centralized mainframe computer servers located outside India. This information is then accessed by such Travel Agents on their individual desktops via internet. The Appellants placed on record the copies of these Participation Agreements with various CRS companies. It is then urged that the Appellant''s Planning Team determines various information such as flight schedules, ticket fares, availability, etc. and it is then prepared in a suitable format for dissemination. For the purpose of hosting the information there is an agreement entered into with Sabre Inc., a company duly registered in the USA. That is to host the information on its computers/servers that are located in the USA. That is referred to as Sabre Server.

7. Once the information is hosted on this Sabre Server the same is required to be made available to the CRS Companies for onward dissemination to the Travel Agents. That is how the Appellants have entered into an agreement with the third party, namely, Online Airline Group (for short OAG), a Canadian company having its server located outside India. The CRS companies entered into separate agreements with the Travel Agents which enable the Travel Agents to access CRS servers for procuring information in order to carry out bookings for the passengers. The authorization, access and use of CRS servers by the Travel Agents is solely dependant on the CRS companies and the CRS companies may or may not grant the Travel Agents a right to access the CRS servers. There is an arrangement pleaded between the Appellant and CRS companies. The

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consideration paid by the Appellant to the CRS companies inter alia consists an amount per ticket booked by the Travel Agents using the CRS servers. The passengers can book the tickets either from the Appellant''s own booking offices or through a travel agent. In the event, a passenger chooses to book the ticket through the Appellant''s own booking offices, the ticket is booked by accessing the Sabre Server directly and updating the same with the passenger details. Further, in the event the tickets are being booked through a travel agent, the booking is carried out by the Travel Agent by accessing the CRS Servers. The relevant information provided by the Appellant is displayed on the CRS Servers through the Sabre Server. It is in these circumstances the Appellant alleged that it is the CRS servers which transmit to the Travel Agents the information relating to availability of seats or other information for the purpose of business. It is, therefore, the Appellant''s own information which is part of the Participation Agreement entered into by the Appellant with the CRS companies. That is to display the Appellant''s own information on the CRS servers. Mr. Dada handed over to us a Chart and which according to him would show as to how the information has passed and through channels indicated therein.

8. It is urged that in the backdrop of all this the Service Tax liability must be seen. The allegation in show cause notices is that it is the Appellant who failed to discharge his Service Tax liability as a recipient of services under the Reverse Charge Mechanism. What this overlooks is the manner in which the said information passes through the channels.

9. The argument is that the classification under the taxing entry of "Online Information and Database Access or Retrieval Service" must satisfy an essential pre-requisite and that is the ownership of data.

10. In that regard, Mr. Dada relies upon the judgments rendered by the CESTAT. He submits that in the case of United Telecom Ltd. v. Commissioner of Service Tax, Bangalore reported in 2009 (14) S.T.R. 212 (Tri.-Bang.), the CESTAT held that the ownership of data is relevant. If the Appellant-United Telecom was not involved in generation or usage of data, flow of information from different centres to the headquarters and vice versa, then, it cannot be equated with online information or data retrieval. Mr. Dada submits that this is a final judgment rendered by the CESTAT Mr. Dada relies upon paragraph 7.3 of the CESTAT''s judgment in that regard. What one finds on careful perusal of this judgment is that the Appellant-United Telecom before the Tribunal entered into an agreement with the Government of Andhra Pradesh. In terms of the contract, the Appellants were to build, own and operate a Wide Area Network (for short WAN) according to the technical requirements to provide voice, video and data communication services to Andhra Pradesh Technology Services Limited User Organization which includes Government of Andhra Pradesh, State Public Sector Undertakings, Local Bodies in Andhra Pradesh and other autonomous and semi-autonomous organizations set up by the Government of Andhra Pradesh and private organizations for interaction with the Government. The main thrust of the

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argument before the Tribunal was that the data or information on this Wide Area Network belongs to the Government of Andhra Pradesh and is not owned or controlled by the Appellant before the Tribunal to whom the notice was issued. The Appellant cannot be said to be providing the data or information over computer network. The Appellant does not control the traffic over this Wide Area Network and that responsibility lies with the Andhra Pradesh Technology Services Limited. It was argued that the computer network is analogous to highway which reaches various destinations and carries traffic. However, the Highway Authority does not set up distinction or permit or control the traffic. Similarly, the Appellant/noticee does not put up for control data or voice traffic over this Wide Area Network. On the other hand, the Revenue argued that this is not a matter where the ownership could be said to be relevant factor. A plain reading of the entry, therefore, does not warrant any such distinction being made. The Revenue argued that in order to gain access to online information or data two things are essential, namely, one is network or the hardware which is the basic essentiality for transmission of the data and the other one is the software to carry out the operation of the access of database with the aid of the network. Both have to go hand in hand and if one of them fails the access is not possible. Therefore, providing access to data or information through a medium or network is a service and the services rendered by the Appellant/United Telecom were clearly falling within the ambit of "Online Information and Database Access or Retrieval Service".

11. That is how the Tribunal concluded in paragraph 7.3 as under:-

"7.3 We do not agree with the Commissioner that the ownership of data is not relevant. It is a very relevant factor. Whenever, there is information and data retrieval, the ownership definitely becomes very relevant. Just because, the appellant provided a part of the network equipment, we cannot say that the appellant was responsible for the entire services. Again the entire wide area network has been established for better communication between the districts and the State headquarters. The information will be flowing from different centers to the headquarters and vice versa. This cannot be equated with online information and data retrieval. In any case, the appellant is not responsible for the entire network because we find that the communication lines have been leased out from the BSNL by the Andhra Pradesh Government. When they are not functioning, the appellants are not responsible and they do not lose their service charges. They are responsible only for the proper functioning of the equipment supplied by them. Moreover, the data is generated only by the Andhra Pradesh Government and the same is being used by the different wings of the Government, therefore, the appellant has also not provided any data. The responsibility of the appellant is to see that the network (WAN) functions. This cannot be equated with "Online database access/retrieval services". Hence, we cannot understand how the Commissioner has come to the conclusion that the appellant provides this service. The Commissioner''s reference to Board''s Circular with regard to internet service provided is not at all correct. In our view,

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the said Circular is not relevant and the Services provided by the appellant are not similar to those provided by the internet service provider. In this connection, we would like to refer to another taxable service introduced with effect from 1-7-2007, it is called "Telecommunication Service". On going the definition of the Telecommunication Service as per Section 65(109A), it includes among other things.

? Private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the clients;

? Data transmission services including provision of access to wired or wireless facilities and "services specifically designed for efficient transmission of data; and

? Communication through facsimile, pager, telegraph and telex."

12. In the above factual backdrop, the ownership of data was held to be relevant. It was held that whenever there is information or data retrieval the ownership becomes relevant. Just because the Appellant therein provided part of network equipment the responsibility for entire service was not that of the Appellant.

13. The Tribunal then relied upon this order, when it''s Principal Bench at New Delhi in the case of Nestle India Limited v. Commissioner of Central Excise, New Delhi reported in 2011 (22) S.T.R. 165 (Tri.-Del.) at a prima facie stage held that the Globe Centre are not providing access to any data of their own except receiving the data from the Appellant/Nestle India Limited and getting them processed as per the software in place and enabling them to retrieve their own processed data. That is how the Tribunal applied the ratio in the case of United Telecom (supra) and granted partial stay and which direction is to be found in paragraph 11 of the order passed in that regard.

14. The Tribunal has also passed an order in the case of State Bank of India v. Commissioner of Service Tax, Mumbai-II reported in 2013 TIOL 767 CESTAT-Mum. : 2014 (34) S.T.R. 579 (T). This order is also relied on to show that the State Bank of India entered into similar contract and arrangement. Reliance is placed on the order of the Tribunal''s South Zonal Bench in the case of M/s. Philips Electronics India Ltd. v. Commissioner of Service Tax, Chennai reported in 2013-TIOL-1655-CESTAT-MAD, in which an unconditional stay was granted and pre-deposit condition was waived. The argument thus, is that there should be some consistency in the matter of grant of interim stay as well. Reliance is also placed upon the judgment of this Court in the case of Wardha Coal Transport Pvt. Ltd. Vs. Union of India (UOI), .

15. In the present case the Tribunal found that in the order passed in the case of United Telecom (supra) a view may have been taken with regard to the ownership of data and its relevancy, however, all such orders would not bind it straightaway. In paragraph 5.6 of the order under challenge the Tribunal referred

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to it''s order in the case of United Telecom (supra) and made a distinction. It held that United Telecom was engaged to provide Wide Area Network for Andhra Pradesh Government for network connection between the Government offices in the State capital and District Headquarters. The equipments like network interfaces were provided by United Telecom and the Appellant-United Telecom was responsible for effective working of the network. The data was provided by Andhra Pradesh Government through the network to its offices spread throughout the State. It was in that context that the Tribunal held that the Appellant-United Telecom is not providing the services of online information and database access or retrieval service as the responsibility of the service provider relates only to maintenance of network and not providing data or information. Such is not the situation in the present case.

16. The Tribunal also referred to certain other interim orders and particularly in the case of M/s. Philips Electronics India Ltd. v. Commissioner of Service Tax, Chennai reported in 2013-TIOL-1655-CESTAT-MAD and distinguished the same.

17. We have not been shown any judgment or principle of law which disables the Tribunal from undertaking this exercise even at a prima facie stage. To support that there is a strong prima facie case and for total waiver of condition of pre-deposit and unconditional stay of recovery that the Appellant invited attention of the Tribunal to the orders in the case of United Telecom and others. The Tribunal found that prima facie the facts in the case of Appellant are distinguishable from that of United Telecom (supra). We do not find any perversity in the approach of the Tribunal nor can it be held that the Tribunal''s order is vitiated by error of law apparent on the face of record. By mere refusal to follow the final order passed, in the case of United Telecom (supra), but making a distinction from the facts of that case and the present Appellant, the Tribunal could have rendered and taken a different prima facie view. The Tribunal''s finding in paragraph 5.6 that interim orders do not have a binding force nor can they be treated as binding precedents is supported even by the judgment of the Honourable Supreme Court in the case of Empire Industries Limited and Others Vs. Union of India and Others, . In paragraphs 58 and 59 this is what the Supreme Court held:-

"58. Good deal of arguments were canvassed before us for variation or vacation of the interim orders passed in these cases. Different Courts sometimes pass different interim orders as the Courts think fit. It is a matter of common knowledge that the interim orders passed by particular Court on certain considerations are not precedents for other cases which may be on similar facts. An argument is being built up now-a-days that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matters on more or less similar facts, there should not be a different order passed nor should there be any variation with that kind of interim order passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such

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terms as it considers fit and proper and if it had granted interim order at one stage, it should have the right to vary or alter such interim orders. We venture to suggest, however, that a consensus should be developed in the matter of interim orders.

59. If we may venture to suggest, in fiscal matters specially in cases involving indirect taxes where normally taxes have been realised from the consumers but have not been paid over to the exchequer or where taxes are to be realised from consumers by the dealers or others who are parties before the Court, interim orders staying the payment of such taxes until final disposal of the matters should not be passed. It is a matter of balance of public convenience. Large amounts of taxes are involved in these types of litigations. Final disposal of matters unfortunately in the present state of affairs in our Courts takes enormously long time and non-realisation of taxes for long time creates an upsetting effect on industry and economic life causing great inconvenience to ordinary people. Governments are run on public funds and if large amounts all over the country are held up during the pendency of litigations, it becomes difficult for the governments to run and it becomes oppressive to the people. Governments'' expenditures cannot be made on bank guarantees or securities: In that view of the matter as we said before, if we may venture to suggest for consideration by our learned brethren that this Court should refrain from passing any interim orders staying the realisations of indirect taxes or passing such orders which have the effect of non-realisation of indirect taxes. This will be healthy for the economy of the country and for the Courts."

18. Pertinently this judgment of the Honourable Supreme Court was not noticed in the case of Wardha Coal Transport Pvt. Ltd. (supra) by the Division Bench. True it is that the Honourable Supreme Court holds that there is need for consensus in the matter of interim orders, but that is after observing and concluding that every Bench hearing the matter on the facts and circumstances of each case should have right to grant interim orders on such terms as it considers fit and proper. If it grants an interim order, it should have the right to vary or alter such interim orders. In these circumstances the Tribunal''s approach in this case cannot be faulted.

19. Then, the Tribunal refers to it''s own view and which is a matter of some debate. It has been urged that the order passed in the case of M/s. Thai Airways International Public Company Limited v. Commissioner (Adjn.), Central Excise, Delhi reported in 2013 TIOL-1117-CESTAT-DEL cannot be said to be conclusive because the Tribunal relied only on the opinion of the learned Judicial Member. There is difference of opinion between members on the Bench deciding Thai Airways (supra) and the matter is still at large.

20. We have perused the order passed and impugned in the present Appeal and particularly paragraphs 5.7 to 5.9. We are of the opinion that it was not necessary for the Tribunal to have rendered any conclusive finding on the point. If it was still at large the Tribunal should have not made observations which

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would prejudice the case of the Appellant. The Tribunal is not required to form a firm or conclusive opinion at an interlocutory stage. It''s tentative and prima facie finding is enough. We are of the view that the Tribunal''s observations in the above referred paragraphs should be considered as purely tentative and prima facie and should not influence the Tribunal while deciding the present Appeal finally.

21. It is in these circumstances and when the Tribunal refers to the entry in question, its plain reading and facts emerging from the case of the present Appellant, then, its prima facie conclusion cannot be faulted. It is not as if the Tribunal has completely shut out the Appellant. The Tribunal has referred to all facets, namely, prima facie case, whether demand is within limitation or time barred. The Tribunal found that out of total service tax demand of Rs. 187 crores an amount of Rs. 147 crores is within the normal period of limitation. However, we are of the opinion that the Tribunal having noted the financial hardship should have considered the claim of the Appellants that they are suffering huge losses. The Appellants pointed out that for the quarter ending on 30-9-2013 the net loss incurred is Rs. 1246.39 crores. However, the Tribunal was informed that the current assets show an amount of Rs. 4438.85 crores as on 30-9-2013. In view of huge assets available the Appellants should be put to terms. It is in that regard we have referred to the observations in the Supreme Court judgments. In the case of Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others, , the Honourable Supreme Court held as under:-

"11. The instrument of taxation is not merely a means to raise revenue in India; it is, and ought to be, a means to reduce inequalities. You don''t tax a poor man. You tax the rich and the richer one gets, proportionately greater burden he has to bear. Indeed, few years ago, the Income-tax Act taxed 94p out of every rupee earned by an individual over and above Rupees one lakh. The Estate Duty Act, no doubt since repealed, Wealth-tax Act and Gift-tax Act are all measures in the same direction. It is for this reason that while applying the doctrine of classification - developed mainly with reference to and under the: concept of "equal protection of laws" Parliament - is allowed more freedom of choice in the matter of taxation vis-a-vis other laws. If this be the situation in the case of direct taxes, it should be more so in the case of indirect taxes, since in the case of such taxes the real incidence is upon some other than upon the person who actually makes it over to the State though, it is true, he cannot avoid the liability on the ground that he has not passed it on. In the matter of taxation it is, thus, not a question of power but one of constraints of policy - the interests of economy, of trade, profession and industry, the justness of the burden, its ''acceptability'' and other similar considerations. We do not mean to say that taxation laws are immune from attack based upon Article 14. It is only that Parliament and legislatures are accorded a greater freedom and latitude in choosing the persons upon whom and the situations and stages at which it can levy tax. We are not unaware that this greater latitude has been recognised in USA and UK even without resorting to the concepts of ''equality before law'' or

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"the equal protection of laws" - as something that is inherent in the very power of taxation and it has been accepted in this country as well. (See in this connection the decision of Subba Rao, C.J., (as he then was) in Gorantia Butchayya Chowdary and others Vs. The State of Andhra (now Andhra Pradesh) and others, , where the several US and English decisions have been carefully analysed and explained). In the context of our Constitution, however, there is an added obligation upon the State to employ the power of taxation - nay, all its powers - to achieve the goal adumbrated in Article 38."

22. Once we have noted the very object and purpose of levy of taxes, then, it is not as if in this case the Tribunal could not have performed a balancing act. The Tribunal''s direction to deposit a sum of Rs. 147 crores out of total demand of Rs. 187 crores and when the point was imminently arguable, visits the Appellants with serious consequences. It must be borne in mind that when there is a right of appeal and it may be subjected to certain conditions, yet it is not as if by the conditions that can be imposed the right is lost or rendered illusory. If a huge demand is raised and the Tribunal directs as in this case a pre-deposit of Rs. 147 crores, then, to our mind such direction may seriously prejudice the exercise of the right created in favour of the Appellants. The appeal is still pending. The equities could have been, therefore, properly balanced.

23. In that regard we have heard Mr. Dada and Mr. Dada has invited our attention to the affidavit of Mr. Sundaram Ramesh, Manager (Taxation) of the Appellant. Mr. Dada submits that without giving up the plea that this was a case of complete waiver of pre-deposit, alternatively and without prejudice it is the case of the Appellant that it is holder of Duty Credit Scrips under the Served From India Scheme contained in the Foreign Trade Policy. That is to the tune of Rs. 145 crores which is valid till 22-4-2015. The details of this Duty Credit Scrips were submitted before the Tribunal in the course of hearing and forms a part of the compilation at page 9. The Appellant undertakes to this Court to freeze or block or refrain from utilisation 50% of the said Scrips in the sum of Rs. 72.5 crores pending the hearing and final disposal of the Appeal before the Tribunal.

24. Mr. Jetly submits that just as the Government does not run on bank guarantees, equally such undertakings and which do not secure the demand at all, cannot serve the ends of justice.

25. As a result of the above discussion and finding that the Tribunal could have properly balanced the rights and equities that to a limited extent a case for interference in the impugned order and direction is made out. Though not treating this order as a precedent, but confining and restricting it to the facts and circumstances of the Appellant''s case that we entertain this Appeal. We entertain it only on a limited point that when the Tribunal is exercising its discretion it ought to be present its mind that if there are conflicting opinions and rendered by its different Benches, then, the Assessee should not be visited with such consequences as would amount to denying the right of appeal or completely prejudicing the case on merits. They ought to be given a meaningful opportunity

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to argue their case on merits before the Tribunal. Equally it is for the Revenue to support its demand on the basis of records and provisions of law. Though the provision of law in this case makes no reference to ownership, but there was an order passed making it a relevant test, then, such condition as is imposed in the present case cannot be said to be justified.

26. In such circumstances we are inclined to modify the order and direction of the Tribunal to this extent that in the event the Appellants furnish a bank guarantee of a nationalized bank in the sum of Rs. 50 crores within a period of Eight weeks from the date of receipt of a copy of this order, there will be waiver of condition of pre-deposit and stay of recovery pending the hearing and final disposal of the Appeal before the Tribunal. It would be open for the Appellant to deposit part of the amount in cash and the balance could be secured by a bank guarantee as above. We clarify that we have not expressed any opinion on the rival contentions and each one of them is kept open. Equally we clarify that the Tribunal should decide the Appeal on its own merits and uninfluenced by any tentative and prima facie observation and conclusion. In the event this condition is satisfied and within the time aforesaid, the Tribunal shall hear the Appeal on its own merits as expeditiously as possible and within a period of four months from the date compliance is reported. In the event compliance is not reported all consequences in law shall follow. The Appeal is allowed in these terms with no order as to costs.

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