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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/4432/2004 - EX[DB]

Date 25/02/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. MEERUT-I
UNIVERSITY ROAD, MANGAL PANDEY NAGAR,
MEERUT.

C.C.E. MEERUT-I — Appellant

Vs

M/S ASWAD STEELS & ALLOYS (P) LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 94/ **2010 EX[DB]** dated 05-11-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S ASWAD STEELS & ALLOYS (P) LTD.
   MEERUT ROAD, MUZAFFARNAGAR (U.P.)
2. Adv. / Consult
   MR.AALOK ARORA, ADVOCATE
   82-MISSION COMPOUND, SAHARANPUR-247001 (U.P.)

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 4432 of 2004 &
Excise Cross Objection No. 361 of 2004

(Arising out of Order-in-Appeal No. 422-CE/MRT-I/2004 dated 11.06.2004 passed by the Commissioner (Appeals) Central Excise, Meerut-I).

DATE OF HEARING : 05.11.2009
DATE OF DECISION : 05.11.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. P. KARTHIKEYAN, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?	Yes
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the Order ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

CCE, Meerut-I .... **Appellant**
(Rep by Sh. R.K. Verma, DR)

VERSUS

M/s Aswad Steels & Alloys (P) Ltd. .... **Respondent**
(Rep. by Sh. Alok Arora, Adv.)

CORAM : HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. P. KARTHIKEYAN, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 94 / 2010 - Ex

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned DR for the appellant and the learned advocate for the respondents.

2. This appeal arises from order dated 11th June, 2004 passed by the Commissioner (Appeals), Meerut. By the impugned order, the appeal filed by the respondents was allowed and the penalty of equal amount of duty imposed by the Additional Commissioner under its order dated 27th March, 2003 was modified and reduced to Rs. 10,000/-.

3. The respondents are engaged in the manufacture of M.S. Ingots falling under Chapter sub-heading 7206.90 of the Schedule to the Central Excise Tariff Act, 1985 and were working under the Compounded Levy Scheme w.e.f. 01.09.1997.

4. The undisputed facts are that : the respondents were required to follow the provisions of Rule 97-ZO of the erstwhile Central Excise Rules, 1944 for the purpose of payment of duty. As per the provisions of law, they were required to pay Central Excise Duty either on their annual capacity of production approved by the Commissioner at 12800 M.T. per annum on which the duty liability being fixed @ Rs. 6,66,667/- per month under the Induction Furnace Annual Capacity Determination Rules, 1997 and the intimation to the respondents dated 30th March, 1998 in that regard or on the actual capacity of production. The capacity of their induction furnace was 4 M.T. as per their declaration and they had opted for paying the duty in terms of Rule 96-

ZO(3) of the said Rules and, therefore, were required to pay the duty @ Rs. 6,66,667/- per month in terms of Notification No. 33/97 dated 01.08.1997.

5. On account of short payment of duty amounting to Rs. 11,39,784/- for the period from 1st July, 1999 to 30th September, 1999, a show cause notice dated 08th December, 1999 came to be issued demanding the said short paid duty along with interest and proposal for imposition of penalty. The said demand was confirmed by the Additional Commissioner by order dated 27th March, 2003 while imposing penalty of equal amount of duty and charging interest @ 18% per annum on the amount due. Being aggrieved, the matter was carried in appeal before the Commissioner (Appeals) which came to be disposed of by the impugned order.

6. While assailing the impugned order, the learned DR submitted that, as far as period between 14th September to 30th September, 1999 is concerned, the amount of duty, which was due and payable by the respondents, was Rs. 3,77,778/- and the same was not paid on the due date. A sum of Rs. 3,00,000/- was paid on 1st October, 1999 and the balance was paid on 5th November, 1999. Though the show cause notice in that regard came to be issued subsequent thereto i.e. on 8th December, 1999, considering the provisions of Rule 96-ZO(3) of the said Rules and the law laid down by the Apex Court in the case of **Union of India vs Dharamendra Textile Processors** reported in 2008 (231) ELT 3 (SC), the learned Commissioner (Appeals) could not have reduced the penalty to Rs. 10,000/-, but could have restricted the penalty to Rs. 3,77,778/-, the defaulted

amount of duty. He has also drawn our attention to the decision of the Punjab & Haryana High Court in the matter of **Shree Bhagwati Steel Rolling Mills vs Commissioner of Central Excise, Chandigarh** reported in 2007 (207) ELT 58 (P&H), while contending that the provisions of Finance Act, 2001 would not, in any manner, affect the liability of the assessee or the obligation of the Officers under the statutory provisions as were in force at the relevant time.

7. The learned advocate for the respondents, on the other hand, submitted that, while the proceedings, pursuant to the issuance of the show cause notice, were pending before the adjudicating authority, there were also proceedings pending in relation to the abatement claim put forth by the respondents and it has been subsequently disposed of by the Commissioner under order dated 02nd September, 2008 whereby an abatement of duty under Rule 96-ZO(2) of the said Rules has been allowed for the period 11th August, 1999 to 13th September, 1999 i.e for 34 days amounting to Rs. 7,55,556/- . The adjudicating authority in relation to the show cause notice dated 8th December, 1999 had passed the order without taking into consideration the pendency of the abatement claim. Being so, on this count itself there was no justification for imposing any penalty at all.

8. The learned advocate further submitted that, taking into consideration the provisions of the Finance Act, 2001 and the law laid down by the Tribunal in the matter of **Karnataka Ginning & Pressing Factory vs Commissioner of Central Excise, Thane-II** reported in 2008 (231) ELT 257 and **Asean Aromatics Pvt. Ltd. vs Commissioner of Central Excise, Chennai** reported in 2008 (232)

ELT 514 as well as by the Supreme Court in the matter of **Star India Pvt. Ltd. vs Commissioner of Central Excise, Mumbai & Goa** reported in 2006 (1) STR 73 (SC), the authority lacked jurisdiction to impose penalty in relation to the proceedings prior to the enforcement of the said Finance Act. Drawing our attention to explanation clause to Section 132 of the Finance Act, 2001, the learned advocate submitted that, it clearly provides that, no act or omission on the part of any person would be punishable as an offence which would not have been so punishable if the said section had not come into force, and, according to the learned advocate, the expressions 'offence' and 'punishable' in the said explanation would include the provision relating to penalty.

9. The learned advocate also submitted that, the Apex Court in the matter of **Commissioner of Central Excise, Meerut vs M/s Kukreti Steels Ltd.,** Civil Appeal No. 7016 of 2008 delivered on 1st May, 2009 has clearly stated that, irrespective of the decision in **Dharamendra Textile Processors'** case (supra), the party can agitate new point in relation to the liability of the penalty also. Being so, according to the learned advocate, considering the point based on the explanation clause to Section 132 of the Finance Act, 2001 raised on behalf of the respondents, the authorities could not have imposed any penalty in the matter in hand.

10. At the outset, it is to be noted that the period in relation to which there was default in payment of duty on the due date was from 14th September, 1999 to 30th September, 1999. The abatement claim

was in relation to the period from 10^{th} August, 1999 to 13^{th} September, 1999.

11. The Circular No. 331/47/97-CX dated 30^{th} August, 1997 to which the attention was drawn by the learned advocate for the respondents and particularly to clause (e) of para 4 of the said Notification, in support of his contention in relation to failure on the part of the authorities to take note of the pendency of the proceedings relating to the abatement claim, reads thus :

> **"Rule 96ZO has been amended to allow abatement of duty, under sub-Section (3) of Section 3A of the Central Excise Act, 1944, for the induction furnace units which remain closed for seven or more days. If an induction furnace unit operating under section 3A is continuously closed for not less than 15 days, then pre-payment of duty for the closure period is not to be insisted upon provided the unit has fulfilled all the conditions stated in sub-rule 2 of rule 96ZO. However, the above claim should be subject to verification by the jurisdictional Assistant Commissioner of Central Excise. If such a closure is for a reasonably long period, periodic verification about the continued closure should be done by the jurisdictional Assistant Commissioner of Central Excise."**

12. Plain reading of above quoted clause would disclose that the same can be of help when the period for which the abatement claim coincides with the period in respect of which the default in payment of duty is alleged to have been made and not otherwise. The clause subsequently refers to "then pre-payment of duty for the closure period is not to be insisted upon", which means that, the benefit under the said clause can be availed in case the abatement claim is pending in relation to the period for which the Department alleges non-payment

of duty and not otherwise. That is not the case in the matter in hand as the abatement claim relates to the period prior to 14th September, 1999 and the short payment of duty was in relation to the period from 14th September, 1999.

13. As regards the contention that in view of the Finance Act, 2001 and particularly considering the explanation clause to Section 132 of the said Act, the authorities could not have imposed the penalty, it is sought to be contended that, in view of omission of Section 3A of the Central Excise Act under Section 121 of the said Finance Act, the action which was not sought to be initiated on the basis of the said provision of law would lapse pursuant to the omission of the said statutory provision. He further submitted that, though Section 132 of the Finance Act validates the pending actions, the proceedings as far as imposition of penalty is concerned, are kept out of such protection by virtue of the explanation to the said Section. It is difficult to accede to this submission. The explanation clause to Section 132 reads thus :

> **"For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force."**.

Apparently, the explanation merely reiterates the mandate of Article 20(1) of the Constitution of India. The said clause refers to the expression 'punishable as an offence'. Though the term 'offence' has not been defined under Finance Act or the Central Excise Act, the fact remains that Section 17 of the Central Excise Act enumerates the offences and the punishment for the same. It is also pertinent to note that the term 'offence' has been defined under Section 3(38) of the General Clauses Act, 1897, to mean, any act or omission made punishable by any law for the time being in force. There is no definition given of the word 'punishment' in the General Clauses Act. The Code of Criminal Procedure, in Section 2(n) defines the term 'offence' to mean any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871 (1 of 1981). The term 'complaint' is defined in Section 2(d) of the said Code to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the said Code, that same person, whether known or unknown, has committed an offence, but does not include a police report. In other words, the word 'offence' comprehends any act or omission which is punishable by any law in force and by taking resort to the law in force relating to the criminal procedure. Section 132 under clauses (a), (b) and (c) thereof, nowhere refers to offence or punishment. The same refer to any action taken or anything done or omitted or suit and other proceedings or penalty or fine. The same nowhere indicates reference to the activity in the nature of 'offence' as is specified in Section 17 of the Act. On the contrary, the explanation clause specifically refers to 'punishable as an offence'. Considering the same, the expression 'offence' in the explanation to Section 132 by no stretch of imagination would include a civil wrong. It will essentially relate to an offence in relation to an act omission under the said Act. In other words, in case of any default by the assessee in relation to the duty liability under the Excise Act or the

Finance Act, prior to enforcement of Finance Act, 2001, by virtue of Section 132, the pending proceedings would not be validated in relation to the jurisdiction of the authority to impose the punishment for such offence but the same Rule cannot be applied to the liability to pay the duty or the obligation to pay penalty on account of default in payment of duty. Failure to comply with the obligation to pay the duty in time is not mere a civil wrong but also a criminal offence. The explanation clause only relates to such criminal offences and not to the civil wrongs. Penal liability i.e. criminal liability cannot be checked with retrospective effect, which is the mandate of Article 20(1) of the Constitution and the said rule is found incorporated in the explanation clause.

14. It is true that in **Karnataka Ginning & Pressing Factory's** case (supra), the Tribunal had observed that, "the provisions of Section 3A having been omitted and not in existence, the Commissioner has no power or authority to pass the order and the said impugned order is without any jurisdiction". Undisputedly, the said ruling was given on the basis of the law laid down by the Apex Court in the case of **Kolhapur Canesugar Works Ltd. vs Union of India** reported in 2000 (119) ELT 257 (SC). While placing reliance in the said decision, the Tribunal had observed thus :

> **"Hon'ble Supreme Court in the case of Kolhapur Canesugar Works Ltd. vs Union of India reported in 2000 (119) ELT 257 (SC), while dealing with an identical issue i.e. effect of omission of Rule 10A w.e.f. 6.8.1977 from the statute, without any saving clause, on the proceedings pending as on the same date held that the same would lapse and any order passed in the proceedings thereafter is to be treated as *non est.*"**

15. It must be noted that the decision of the Supreme Court in **Kolhapur Canesugar Works Ltd.**'s case (supra), though in relation to Rule 10-A, held that, the proceedings had lapsed, the same was held so on account of absence of saving clause and non-applicability of the provisions of Section 6 of the General Clauses Act to those proceedings. The same appears to have been not brought to the notice of the Tribunal while disposing of the matter in **Karnataka Ginning & Pressing Factory's** case (supra). The Apex Court in **Kolhapur Canesugar Works Ltd.**'s case (supra) in para 35 had specifically clarified thus :

> **"35. For the reasons set forth above we do not accept the view taken in Saurashtra Cement and Chemical Industries Ltd. (supra), in Falcon Tyres Ltd. (supra) and the other decisions taking similar view. It is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule after the said provision was omitted the Court is not to look for a provision in the newly added rule for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the rule under which the notice was issued. It is our considered view that in such a case the Court is to look to the provisions in the rule which has been introduced after omission of the previous rule to determine whether a pending proceeding will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such a proceeding will continue. If the case is covered by Section 6 of the General Clauses Act or there is a pari material provision in the statute under which the rule has been framed in that case also the pending proceeding will not be affected by omission of the rule. In the absence of any such provision in the statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceeding was initiated being deleted/omitted. It is relevant to note here that in the present**

> **case the question of divesting the Revenue of a vested right does not arise since no order directing refund of the amount had been passed on the date when Rule 10 was omitted."**

It is thus clear that in the absence of any saving clause in the repealing act and in case of non-applicability of the provisions of Section 6 of the General Clauses Act, the proceedings initiated under the repealed provision would not survive after it is repealed. But that is not the case in the matter in hand. Indeed, the fact that the proceedings were initiated by the show cause notice dated 8th December, 1999 in the case in hand, are not strictly in dispute. What is sought to be contended is that, the power to impose the penalty is taken away by virtue of explanation clause to such saving provisions. As already observed above, the explanation clause does not relate to the power of imposition of penalty.

16. In **Asean Aromatics Pvt. Ltd.'s** case (supra), apparently, the decision of the Apex Court in **Kolhapur Canesugar Works Ltd.**'s case (supra) was not brought to the notice of the Bench. What was brought to the notice of the Bench was the decision in the matter of **Star India Pvt. Ltd.** (supra). Besides, there was no dispute raised in relation to the scope of the explanation before the Bench and that is apparent from reading the order itself. The Bench therein has held thus :

> **"Thus the show cause notice dated 1-8-2000 issued under the omitted Rule 173GG became operative by virtue of the retrospective operation of the provisions of Section 38A of the Act. Section 132 of the Finance Act revalidated actions already taken under omitted Rules. However, the explanation to this Section protected persons targeted by such actions, from**

penalty. This provision declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the Section had not come into force."

This was on the assumption that the act was not punishable at the relevant time. Being so, this decision also is of no help to the respondents to canvass the point which is sought to be canvassed in the matter in hand.

17. In **Star India Pvt. Ltd.'s** case (supra), the Apex Court while dealing with the liability to pay the interest ~~was~~ held as under :

> **"7. In any event, it is clear from the language of the validation clause, as quoted by us earlier, that the liability was extended not by way of clarification but by way of amendment to the Finance Act with retrospective effect. It is well established that while it is permissible for the legislature to retrospectively legislate, such retrospectivity is normally not permissible to create an offence retrospectively. There were clearly judgments, decrees or orders of courts and Tribunals or other authorities, which required to be neutralised by the Validation Clause. We can only assume that the judgments, decree or orders etc. had, in fact, held that persons situate like the appellants were not liable as service providers. This is also clear from the Explanation to the Validation Section which says that no act or acts on the part of any person shall be punishable as an offence which would have been so punishable if the Section had not come into force.**
>
> **8. The liability to pay interest would only arise on default and is really in the nature of a quasi-punishment. Such liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect."**

18. Obviously, the Apex Court has reiterated the well settled principle of law that while it is permissible for the legislature to

retrospectively legislate, such retrospectivity is normally not permissible to create an offence retrospectively. Same principle would apply in case of liability is concerned. If at the relevant time the omission to pay the duty was not subjected to the liability of payment of interest, obviously it would mean that such liability cannot be created retrospectively. In the case in hand, undisputedly, the provisions regarding the power to impose penalty were in force during the relevant period. The power to impose the penalty is not sought to be applied retrospectively.

19. The Punjab & Haryana High Court in **Shree Bhagwati Steel Rolling Mills'** case (supra), while dealing with Section 38-A of the Central Excise Act, 1944, which was sought to be amended under Finance Act, 2001 under Section 131 thereof, has held that, omission of Section 3A from the said Act would not wipe out the liability of assessee which arose under the said provision at the time when the said provision was already in force.

20. It is sought to be contended that the decision of the Punjab & Haryana High Court is in relation to Section 38 which refers to Section 131 of the Finance Act, whereas the arguments canvassed on behalf of the respondents are on the explanation to Section 132 of the Finance Act. It hardly makes any difference. Section 132, in fact, though has been independently drafted in the statute, it is in the form of a proviso to Section 131 itself. Section 132 reads thus :

> **"132. Validation of certain action taken. - Any action taken or anything done or omitted to be done or purporting to have been taken or done or omitted to be done under any rule, notification**

or order made or issued under the Central Excise Act, or any notification or order issued under such rule at any time during the period commencing on and from the 28th day of February, 1944 and ending with the day, the Finance Bill, 2001 receives the assent of the President, shall be deemed to be and to always have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made by section 131 of the Finance Act, 2001 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, —

(a) any action taken or anything done or omitted to be done, during the said period in respect of any excisable goods under any of such rule, notification or order, shall be deemed to be and shall be deemed to always have been, as validly taken or done or omitted to be done as if the amendment made by section 131 of the Finance Act, 2001 had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for taken or anything done or omitted to be done, in respect of any excisable goods under any of such rule, notification or order, and no enforcement shall be made by any court, of any decree or order relating to such action taken or anything done or omitted to be done as if the amendment made by section 131 of the Finance Act, 2001 had been in force at all material times;

(c) recovery shall be made of all such amounts of duty or interest or penalty or fine or credit of duty in respect of inputs or capital goods or other charges which have not been collected or, as the case may be, which have been refunded, as if the amendment made by section 131 of the Finance Act, 2001 had been in force at all material times.

Explanation. - For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

21. Perusal of Section 132 would clearly disclose that, it invariably refers to Section 131 of the Finance Act. It essentially being saving clause, which is sought to be introduced on account of amendment carried out to Section 38-A read with the deletion of Section 3A, Section 132 cannot be read independently of Section 131 and Section 121 of the Finance Act. Having so read, one can easily understand the import of the judgment of the Punjab & Haryana High Court.

22. The Supreme Court in the order dated 1st May, 2009 in the matter of **Commissioner of Customs & Central Excise, Meerut-I vs M/s Kukreti Steels Ltd.** (supra) has observed that :

> **"In this case, we are only concerned with the quantum of penalty and not with the imposition of penalty. In our view, therefore, Dharmendra Textile's case squarely applies.**
>
> **A new point is sought to be agitated before us relatable to imposition of penalty. It is open to the assessee to work out his rights, if so advised, in accordance with law."**

The order merely clarifies that the decision in **Dharamendra Textile Processors'** case (supra) was on the point of quantum of penalty and not power to impose the penalty. Undoubtedly, therefore, we have heard the learned advocate at length on the point of power to impose the penalty and delivered judgment in relation thereto. The observation of the Supreme Court, in the above case, is essentially on the point that, in case any dispute arises about the power of the authority to impose the penalty, the same issue can definitely be raised by the assessee before the competent authority.

23. Considering the facts and circumstances of the case and applying the law laid down by the Apex Court in relation to the quantum of penalty in **Dharamendra Textile Processors'** case (supra), we find that the Commissioner (Appeals) erred in reducing the penalty to Rs. 10,000/-. The Commissioner (Appeals) having found that there was default in payment of duty to the tune of Rs. 3,77,778/-, had no discretion or option to modify the penalty and the same ought to have been in accordance with the provisions of law which require penalty equal to the duty amount. The order in that regard, therefore, cannot be sustained and is liable to be set aside and the penalty to be quantified to Rs. 3,77,778/- for the reasons stated above. Therefore, we allow the appeal in the above terms and dismiss the cross-objections.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(P. KARTHIKEYAN)
MEMBER (TECHNICAL)

Golay