IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
EASTERN ZONAL BENCH: KOLKATA

MA-(ROA)-77100,77101/18 & MA (AE)-77317,77318/18
(Ex.Appeal Nos.445,446/10)

(Arising out of Tribunal's Order No.FO/A/71128-71129/2013 dated 25.11.2013 passed by this Tribunal)

M/s Aarem Chemicals Pvt. Ltd.
Shri R.K.Vijay

Applicant (s)/Appellant (s)

Vs.

CCEx., Kol.V

Respondent (s)

Appearance:

Shri B.N.Das, Consultant for the Appellant 9s)
Shri K.Chowdhury, Supdt. (AR) for the Revenue

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 23.10.2018
Date of Pronouncement : 12.11.2018

ORDER NO.MO/75986-75989/2018

Per Bench :

The present Miscellaneous Applications have been filed by the applicants/appellants for restoration of appeals, which were dismissed by this Tribunal vide Final Order No.FO/A/71128-71129/2013 dated 25.11.2013.

2. Vide the earlier order of the Tribunal dated 03.09.2013, the appellants were directed to make predeposit of 50% of the duty demanded in the impugned order within a period of eight weeks from the date of that order. The Order dated 25.11.2013 dismissing the

appeals was passed by the Tribunal on account of failure on the part of the appellant to make predeposit as ordered earlier by the Tribunal. Against the order dated 25.11.2013 of the Tribunal, the appellant went before the Hon'ble Calcutta High Court, who vide their Order dated 4th September, 2015 in G.A.No.2854 of 2015 granted an additional period of eight weeks from that date for making predeposit. The amount of predeposit was also reduced to Rs.35.00 lakhs and the Hon'ble High Court directed that if the predeposit as ordered by them was not made within the time granted by the Court, the earlier Order of the Tribunal dated 25.11.2013 shall stand revived. An application has further been made by the appellant to the Hon'ble High Court for review of the said decision, but the same was also dismissed vide Order dated 06.09.2016. The issue was further carried by the appellants before the Hon'ble Supreme Court. The Apex Court vide their Order dated 10.04.2017 in Special Leave Petition (C) Nos.965-966/2017 dismissed the SLPs, but granted a further four weeks time for making predeposit amounting to Rs.35 lakhs.

3. Heard Shri B. N. Chattopadhyay, ld.Consultant for the appellants/applicants. He submitted that the direction of the Hon'ble Apex Court for predeposit of an amount of Rs.35 lakhs has now been complied with by the appellants. He submitted that pre-deposit totally amounting to Rs.42 lakhs has been made by the appellants. He prayed that the appeals may be restored.

4. The ld.D.R., Shri K.Chowdhury, for the Revenue, has strongly opposed the restoration of the present appeals. He submitted that the pre-deposit has been made by the appellants many months after the

period granted to them by the Hon'ble Calcutta High Court and later by the Hon'ble Supreme Court in their respective Orders. He pointed out that the strict time limits granted by the Court, have not been complied with by the appellants and hence, in terms of the Hon'ble High Court's Order, the earlier order of the Tribunal dated 25.11.2013 dismissing the appeals has to be considered as revived. Complying with the pre-deposit, after the given period, the Tribunal is not empowered to restore such appeals. In particular, he relied on the Three Member Bench decision of the Tribunal in the case of Rakesh Kumar Vs. Commissioner of Customs (Exports), Nhava Sheva reported in 2016 (343) ELT 270 (Tri.Mumbai). Finally, he submitted that the power of restoration of the Tribunal has been extinguished since the order of the Tribunal has got merged with the orders passed by the higher judicial forums.

5. Heard both sides and perused the records.

6. The present applications have been filed for restoration of these two appeals, which were dismissed by the Tribunal vide Final Order No.FO/A/71128-71129/2013 dated 25.11.2013. The appeals were originally dismissed for failure to make pre-deposit as ordered earlier by the Tribunal. As per the brief facts of the case outlined (supra), the dismissal order of the Tribunal was carried by the appellants before the Hon'ble High Court at Calcutta and further before the Hon'ble Supreme Court. Neither of the higher judicial forum interfered with the order of the pre-deposit of the Tribunal, but granted further time for making pre-deposit which was also reduced to Rs.35.00 lac. Finally, the Hon'ble Supreme Court extended the period for making such pre-

deposit by a further period of four weeks from the date of their order i.e. 10.04.2017. The said period was also lapsed before the appellant finally made such pre-deposit before approaching the Tribunal with the present Miscellaneous Applications.

7. The Revenue has strongly objected to such restoration after delayed compliance of the order for making pre-deposit. In particular, ld. DR has brought to our notice the decision of the Three Member Bench of the Tribunal in the case of Rakesh Kumar vs. Commissioner of Customs (Exports) (supra). By majority order the Tribunal held that the Tribunal cannot accept the amount deposited by the appellant after the extended period granted by the Hon'ble High Court for restoring the appeal. The observation of the Third Member Bench in coming to such a conclusion is reproduced below:

> ***"19.****Considering the entire issue from another angle, if the Tribunal accepts the amount deposited by the appellant after the extended period, as granted by the Hon'ble High Court, and restores the appeal, it would be viewed by Hon'ble High Court and the same can be called in question by Hon'ble High Court, as contempt of the direction given by them. In my view, the Superior Court has after dismissing the appeal in interest of justice, extended the period for pre-deposit ordered by Tribunal, having not been complied, by the appellant, the Tribunal has no powers to extend the period and accept the amount deposited as substantial compliance of the stay order. It was for the appellant to approach the Hon'ble High Court and get appropriate directions, having not done so the appellant cannot expect the condonation of delay in making pre-deposit, from Tribunal.*
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> ***19.1****My this above view is fortified by the judgment of Hon'ble High Court of Bombay in the case of Sarda Agro Oils Ltd. v. U.O.I. - 2015 (323) E.L.T. 475 (Bom.) wherein the Lordship in Para 3 held as under : -*
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> *We have noted this statement in the affidavit in reply. The "3. law on the point is very clear. When there is Court's order and which directs the Authority like the Commissioner of Customs to decide the case within a particular time*

frame, then, it is his bounden duty to adhere to it. If there are any difficulties in following and abiding by the schedule prescribed in the Court's order, then, appropriate applications have to be made seeking extension of time and the Court must be apprised of all developments and difficulties, it is when the Court extends time, then, the matter can be decided within that extended period, else all such authorities are aware of the consequences of not complying with the Court's order and in time. They could be visited with personal costs and consequences such as entering displeasure of this Court in their service record."

It can be noted that their lordships were very clear that any difficulty arises in following and abiding by the schedule prescribed by the Court, an appropriate application has be to be made to that Court.

20.*In view of the foregoing, I find the order passed by the ld. Member (T) is correct and that the Tribunal becomes a functus officio as the Doctrine of merger applies in this case. Accordingly, I concur with the views of the ld. Member (T).*

21.*Registry is directed to place the file before the Bench to pass appropriate orders.*

(Pronounced in Court on 8-10-2015)

Sd/-

(M.V. Ravindran)

Member (Judicial)

MAJORITY ORDER

22.*In view of the majority opinion, the following is ordered :*

23.*The Tribunal has become functus officio as the Doctrine of merger applies in the present case. The Tribunal has no jurisdiction to entertain the application for restoration of appeal when the condition of pre-deposit by 12-6-2014 as ordered by the Hon'ble High Court is violated by the appellant.*

ROA dismissed."

8. By following the Larger Bench decision as above, we are of the considered opinion that these appeals cannot be restored.

9. In the result, the Misc. Applications are dismissed.

(Pronounced in the open court on 12.11.2018)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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