CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

CUSTOMS APPLICATION (EH) NO: 85054 OF 2024
(on behalf of appellant)
IN
CUSTOMS APPEAL NO: 85155 OF 2024

[Arising out of Order F. No: S/26-98/Adj.DRI/Coastal Energy/2017-18 dated 22nd November 2023 passed by the Commissioner of Customs (Adjudication), Mumbai.]

Ramakrishna Sadasivan
(Liquidator of Coastal Energy Pvt Ltd)
5th Floor, Buhari Towers, 4 Moores Road
Chennai - 600006 … ***Appellant***

versus

Principal Commissioner of Customs (Adjudication)
New Customs House, Ballard Estate, Mumbai – 400001. ***…Respondent***

APPEARANCE:
Shri Mihir Mehta, Advocate for the appellant
Shri Ram K Dahiya, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: _85059 /2024

DATE OF HEARING: 01/02/2024
DATE OF DECISION: 01/02/2024

PER: C J MATHEW

Shri Ramakrishna Sadasivan, in his capacity as Official Liquidator in proceedings consequent upon order of competent authority under the Insolvency and Bankruptcy Code (IBC), 2016, has moved this application for 'out of turn' disposal of appeal[1] filed by M/s Coastal Energy Pvt Ltd (CEPL) against indefinite deferment of proceedings, arising out of show cause notice issued to several entities and persons, communicated in order dated 22nd November 2023 from file[2] of Commissioner of Customs (Adjudication), Mumbai. Learned Counsel for the Official Liquidator submitted that their plea of limited relief, within the narrow compass of detriment to them by enlarging the scope of stay granted to other noticees, warrants immediate disposal. He pointed out the Hon'ble High Court of Bombay, before whom M/s MMTC Ltd had questioned the maintainability of notice under Customs Act, 1962 issued by Additional Director General, Directorate of Revenue Intelligence (DRI), had allowed stay of proceedings pending disposal of the writ petition which the adjudicating authority considered to be bar on conduct of further proceedings on the entirety of the notice for taking recourse to transfer to 'call book', an 'extra statutory' practice prevalent in formations under the Central Board of Indirect Taxes & Customs (CBIC); it was contended that liquidation of the appellant-company stood seriously jeopardized by this *suo motu* action. It was also intimated that a similar petition of theirs, under Article 226 of the Constitution, before the Hon'ble High Court had been withdrawn by them for this very reason. We have heard Learned Authorized

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[1] [85155 of 2024]
[2] [S/26-98/Adj.DRI/Coastal Energy/2017-18]

Representative who submitted that deferring of adjudication was not a detriment to the importer-appellant as liability, if any, would crystallize only after adjudication.

2. Considering the restricted scope of appeal, we allow the application; for the same reason, and as neither facts nor allegations contained in the show cause notice are germane to relief sought, the appeal is taken up for disposal with consent of both sides.

3. The facts, briefly, are that, consequent upon investigations conducted by Directorate of Revenue Intelligence (DRI) into import of coal from Indonesia for operation of thermal power plants through various ports, show cause notice[3] was issued on 14th February 2017 to several importers, including M/s Coastal Energy Pvt Ltd (CEPL), and individuals by Principal Additional Director General, Mumbai Zonal Unit, Directorate of Revenue Intelligence (DRI) to be adjudicated by Additional Director General (Adjudication) ostensibly under the authority of notification no. 6/2017-Cus (NT/CAA/DRI) dated 31st July 2017 of the Central Board of Excise & Customs (CBEC). The noticees, by communication of 25th March 2019, were intimated that the dispute was transferred to 'call book' to be kept pending till some particular consummation occurred. However, after re-designation of adjudicating authority as Commissioner of Customs (Adjudication), *vide*

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[3] [DRI/MZU/F/INT-160/2014]

notification no. 29/2022-Cus (NT) dated 31st March 2022, it was decided to recall that status and noticees were informed, in communication of 11th August 2023 from office of the adjudicating authority, that hearing was scheduled for 28th August 2023. On 6th November 2023, in writ petition filed by M/s MMTC Ltd and two others, the Hon'ble High Court of Bombay allowed application for stay of proceedings in show cause notice till disposal of the petition. The consequence of this order of stay to other noticees is the bone of contention between the department the appellant for the adjudicating authority, by inferring that stay on disposal as intended to affect the entirety of the notice itself, restored the cases to 'call book' and, thus, petrified the dispute *sine die*.

4. Learned Counsel for appellant contended that the freeze on adjudication, as intended by the Hon'ble High Court of Bombay, did not extend to entities and persons who had not been petitioners therein. He further argued that no purpose would be served in deferring proceedings pertaining to the appellant-company which was under liquidation as crystallization of liability, if any, would only be to the advantage of the Central Government whose official the adjudicating authority is. He also pleaded for time-bound disposal of the notice issued to them.

5. Learned Authorized Representative submitted that the adjudicating authority appeared to have been guided by

> *'8. So far as interim reliefs are concerned, pending the hearing and final disposal of the petition further adjudication of the show cause notice shall also remain stayed.'*

in the order of the Hon'ble High Court of Bombay. It was further submitted that it is well-settled legal principle that 'piece-meal adjudication' is grossly improper.

6. With the backdrop of these rival contentions, we turn to the correctness of the presumption by the adjudicating authority that the order of the Hon'ble High Court of Bombay was intended to cease further proceedings in entirety. It is well-settled in law that an order or judgement, of appellate authority or constitutional court, operates *qua* the appellant/petitioner and respondent therein and none else even though qualified to be cited as precedent should another identically, or even similarly, situated appellant/petitioner plead for non-discriminatory applicability for such relief/detriment. Therefore, the relief granted to M/s MMTC Ltd and two others in the writ petition filed by them operates only insofar as the notice relates to them. There can, thus, be no bar, on account of the stay, for the adjudicating authority to restrict the 'call book' status to those who had obtained stay. This is more so as the appellant has not pleaded before the adjudicating authority for deferment and, particularly, in circumstances of the notice having imposed a time-frame for response for placing on the path to conclusion through intimation of hearing at one stage. It would also be unjust for all noticees to be indefinitely placed under the

Damocles' sword of potential detriment merely from one or more of the other noticees, in pursuit of their own interest, have obtained deferment of such conclusion.

7. Show cause notice, under Customs Act, 1962, is prelude to adjudicating upon proposal to visit detriment on any person or entity which maybe that of recovery of duty, with attendant interest and penalty, of withholding of amount claimed as refund, of confiscation of goods for vesting with the Central Government or of penalty being imposed. Such notices, mandated in proceedings arising from section 27, section 28 and section 124 of Customs Act, 1962, comprise allegations against, as also the proposed consequential detriment prescribed by law to, each of the entities or persons therein. Hence, notice to multiple persons/entities arising from the same cause of action are, in effect, separate notices which, in the interest of convenience to avoid narration of common foundational facts and investigation outcome, are clubbed together. Generally, such notices are adjudicated at one go which, however, does not militate against the notice to each entity or person being amenable to disaggregation at time of issue or in disposal of consequent adjudication.

8. Moreover, the order of adjudication, whether in favour of all, or some, noticees and against all, or some, others, renders specific findings and consequences in relation to each. It would, therefore, appear that, legally and procedurally, no infirmity lies in issue of separate

adjudication orders for each noticee and it is only convention and convenience that channels these potentially separate orders into one adjudicatory consummation. It is worth noting that, even in the same order, some outcomes may flow from *ex parte* proceedings which stand on an entirely different footing from others in which defence has been offered. Reversion to such natural autonomy, inhering for each noticee, is, thus, neither improper nor is the ‘piece-meal’ disposal that has been judicially frowned upon; it is the partial disposal of issues in a notice, whether in relation to one noticee or all, that jeopardizes the integrity of the proceedings warranting appellate or writ intervention.

9. It may have been possible to be uncritical of the adumbrated reluctance on the part of the adjudicating authority, even in the absence of any legal or procedural impediment, in prioritizing convenience of disposal over consideration of individual preferences, had the impugned notice emanated from a particular transaction *vis-à-vis* all the noticees. Such leeway certainly cannot be vested in the adjudicating authority when multiple transactions *qua* the same noticee are contained in one notice. The facts of the impugned proceedings strain even such tolerable initiative. The records make it obvious that proceedings were initiated in relation to 186 consignments of which the appellant was concerned with 91 while M/s MMTC Ltd and M/s Tamil Nadu Newsprint Ltd were concerned with 90 and 5 respectively with no hint even of convergence on facts for adjudication, let alone for issue

of show cause notice, in common. That such recourse was had does not obviate the circumstances in which separate notices would, normally, have been resorted to.

10. We take note that the notice pertains to separate imports and, insofar as far as the three importers are concerned, there is no overlap at all. Similarly, while the individual noticees may be tied to the facts pertaining to one or the other of the importers, there is no overlap insofar as role relating to transactions of other importers are concerned. It is all too clear that segregation of the notice into three, encompassing each of the importers and those connected to each importer, would not jeopardize the legality of proceedings by any yardstick. It is merely the convenience of common adjudication, a privilege that the Central Board of Excise & Customs (CBEC) invoked under the authority of its delegated empowerment in Customs Act, 1962, which enabled collating of the separate imports and, indeed, of the three separate importers in one notice. By no stretch would this be ‘piece-meal’ disposal of the show cause notice. There is no reason to countenance the indefinite transfer of the proceedings, initiated against the appellant, to ‘call book’ as communicated in the impugned order.

11. Furthermore, the impending liquidation of the appellant-company, approved by the duly constituted statutory authority, should also not be held to ransom by such extraordinary recourse on the part of an adjudicating authority. Approval thereto would not only impinge

upon the intent of the law relating to insolvency and bankruptcy that replaced another which was found to be counterproductive by the supreme legislative organ of the State but also deprive the noticees of prompt appellate remedies should need thereof arise. In short, the appellate process should not be obviated by such peremptory action on the part of the adjudicating authority. Much water and, more importantly, time has flown since the proceedings were initiated. The plea made on behalf of the appellant for time-bound disposal deserves consideration.

12. Accordingly, we direct the adjudicating authority to dispose of the notice issued to the appellant herein forthwith, and in any circumstances, within four weeks from uploading of this order. Needless to state, the principles of natural justice shall be adhered to and appellant is directed to participate in the proceedings with promptitude for early conclusion. Appeal and application stand disposed off.

(Operative Part of the Order Pronounced in the Open Court on 1st February 2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*