IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. /2024
(@SLP (C) No(s).3534/2023)

ASIT C MEHTA FINANCIAL SERVICES LIMITED **APPELLANT(S)**

VERSUS

THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (CESTAT) & ORS. **RESPONDENT(S)**

O R D E R

Leave granted.

The appellant has assailed the order of the High Court dated 20.10.2022 by which the prayer(s) made by the appellant, *inter alia*, for discontinuation of the bank guarantee seeking refund of the bank guarantee amount of Rs.26,86,000/- (Rupees Twenty Six Lakhs and Eighty Six Thousand Only) was rejected.

During the pendency of this appeal, an application has been filed being IA No.150349/2023 seeking a direction to discontinue the bank guarantee maintained with the Prothonotary of the Bombay High Court pursuant to order dated 11.11.2002 passed by this Court in C.A. No.7199/2002 which is for about twenty two years.

Learned senior counsel, Mr. Gaurav Agrawal, appearing for the appellant drew our attention to the fact that by order dated 11.11.2002, this Court in C.A. No.7199/2002 arising out of SLP(C) No.19883/2002 [*Union of India and Anr. vs. M/s Nucleus Securities Ltd.*] had disposed of the

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Date: 2024.09.18 14:04:20 IST
Reason:

aforesaid appeal by directing the appellant herein to furnish a bank guarantee of a Nationalised Bank equivalent to fifty per cent of the amount to be refunded. On furnishing of such bank guarantee to the satisfaction of the Prothonotary of the Bombay High Court, the Revenue was directed to refund the full amount within four weeks thereafter.

Learned senior Counsel for the appellant submitted that pursuant to the said order, the appellant submitted the bank guarantee in compliance with the order of this Court; that for the last twenty two years, the bank guarantee has been renewed from time to time but the main *lis* has been inconclusive. In this regard, our attention was drawn to the order of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) dated 30.01.2023 which has categorically recorded in paragraph '8' as under:

> **"8. The concerned Customs department, vide its letter dated 01.03.2023, have further informed that the judgment in the case of Weizmann Ltd. & Anr. Vs. CC (Prev.), Mumbai, reported in 2005 (185) ELT 278 (Tri.-LB) was reversed by the Hon'ble High Court of Bombay reported in 2013 (287) ELT 427 (Bom.), (copy enclosed) and hence, on perusal of the said judgment, it appears that nothing remains in the present "Statement of Case' being filed by the Tribunal as per the directions of the Hon'ble High Court order dated 10.01.2006 in Customs Application No.28 of 2001.**
>
> **The above statement of case is submitted in compliance with the directions contained in order dated 10th January, 2006 and reiterated in order dated 20th October, 2022, of the Hon'ble High Court in Reference Application No.28 of 2001.**
>
> **Dated this the 30th day of January, 2023."**

Having regard to the aforesaid, he submitted that when no statement of case has been made before the High Court as such, the retaining of the bank guarantee is not in accordance with law and has caused prejudice to the appellant herein. He, therefore, submitted that the impugned order may be set aside and the prayer(s) made be granted.

Per contra, learned senior counsel for the respondents submitted that having regard to the order passed by this Court on 11.11.2002 and in compliance thereof, the appellant herein had issued the bank guarantee; that the order dated 30.01.2023 of CESTAT is not the end of litigation; that in fact CESTAT has submitted the order of reference to the High Court, but the reference has to be decided, whether the judgment in *Weizmann Ltd. & Anr. Vs. CC (Prev.), Mumbai*, reported in 2005 (185) ELT 278 (Tri.-LB) which has been reversed by the Bombay High Court in judgment reported in 2013 (287) ELT 427 (Bom.), has a bearing on the case is a matter to be considered by the High Court. Till the said decision is rendered by the High Court on the order of reference dated 30.01.2023, the appellant cannot be permitted to wriggle out of the order made by this Court on 11.11.2002, particularly in an appeal filed by the respondent-Union of India. She further submitted that there is no merit in the appeal as well as in the application and the same may be dismissed.

We have considered the submissions advanced at the bar. In light of the pleadings on record and also the orders

made what emerges is the fact that pursuant to the order of this Court dated 11.11.2002, the appellant herein submitted the bank guarantee but what is of crucial importance is since November, 2002 and till date, there has been no conclusion of the *lis* between the parties one way or the other. The fact that the bank guarantee has been renewed and kept alive from time to time for the last twenty two years without there being any conclusion of the *lis* has in fact caused prejudice to the appellant herein who has, for no fault of his but on account of the protraction in litigation, been deprived of a huge amount which is a subject of the bank guarantee.

In the circumstances, we set aside that portion of the impugned order and permit the appellant herein to discontinue the bank guarantee and direct refund of the said amount of the guarantee. The respondent-Union of India shall cooperate in that regard. It is needless to observe that the same is subject to the decision of the High Court to be made on the order dated 30.01.2023 submitted by the CESTAT, West Zone Bench (WZB), Mumbai. The High Court shall consider the same as expeditiously as possible.

Since the bank guarantee is permitted to be discontinued, the appellant to file an Affidavit of Undertaking before the High Court within a period of two weeks and thereafter permission will be granted to discontinue the bank guarantee, thereafter the appellant may discontinue the bank guarantee. That in the event any demand

is to be made on the appellant or the appellant is unsuccessful before the High Court, then it would make the payment as decided by the High Court and in accordance with the direction to be issued by the High Court. In view of the order passed on the Interlocutory Application only and the matter pending consideration before the High Court on merits, we have not interfered with the rest of the order of the High Court. However, we request the High Court to hear and dispose of the reference at the earliest.

The appeal is allowed and disposed of in the aforesaid terms.

……..,J.
(B.V. NAGARATHNA)

……..,J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
SEPTEMBER 09, 2024

ITEM NO.44 COURT NO.9 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 3534/2023
(Arising out of impugned final judgment and order dated 20-10-2022 in WPL No. 26651/2022 passed by the High Court of Judicature at Bombay)

ASIT C MEHTA FINANCIAL SERVICES LIMITED Petitioner(s)

VERSUS

THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (CESTAT) & ORS. Respondent(s)

(IA No. 150349/2023 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 34092/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 09-09-2024 This matter was called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. Gaurav Agrawal, Sr. Adv.
Mr. Aman Varma, AOR
Ms. Riya Wasade, Adv.

For Respondent(s) Mr. Gurmeet Singh Makker, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed and disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA) (DIVYA BABBAR)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)
(Signed order is placed on the file)