**(2013) 07 CAL CK 0021**

**Calcutta High Court**

**Case No:** G.A. No. 1729 of 2013 and CEXA No. 11 of 2013

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| Steel Authority of India Ltd. | | APPELLANT |
| | Vs | |
| Commissioner of C. Ex. | | RESPONDENT |

**Date of Decision:** July 24, 2013

**Citation:** (2014) 302 ELT 348

**Hon'ble Judges:** Indira Banerjee, J; Anindita Roy Saraswati, J

**Bench:** Division Bench

**Judgement**

Indira Banerjee, J.

This appeal is against Order No. S-154/A-115/KOL/2013, dated 22nd April, 2013, passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, dismissing Excise Appeal No. E/A/654/2010 filed by the Commissioner of Central Excise, against Original Order No. 30/COMMR./BOL/10, dated 28th May, 2010 confirming Central Excise Duty demand of Rs. 42,65,979/- along with Education Cess of Rs. 85,320/- and Higher Education Cess of Rs. 42,660/- u/s 11A(2) of the Central Excise Act, 1944, along with interest u/s 11AB of the Central Excise Act, 1944 and penalty of Rs. 43,93,959/- u/s U.A.C. of the Central Excise Act. The appeal has been dismissed inter alia on the ground that it had been filed by the appellant, Steel Authority of India Limited, a Government company within the meaning of the Companies Act, 1956, wholly owned by the Government of India, against the Union of India and its officials without applying for or obtaining the approval of the Committee of Disputes.

2. By an order dated September 11, 1991 in 1992 (61) ELT 3 (SC) the Supreme Court observed that Public Sector Undertakings under the Central Government and the Union of India should not fight litigations in Court.

3. Thereafter an order dated 11-10-1991 followed, directing the Government of India to set up a committee to monitor inter se disputes between public sector undertakings under the Central Government and also disputes between such undertakings and the Union of India. Pursuant to the aforesaid order a Committee

was constituted. The Committee was initially called the High-Powered Committee (H.P.C.). The committee was later called Committee of Secretaries (C.O.S.).

4. In the Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others, , the Hon''ble Supreme Court directed that in the absence of clearance from CoS any legal proceedings between different Central Government and undertakings or between such public sector undertakings and the Union of India, should not be proceeded with. A further order dated 20th July, 2007 was passed in the fourth O.N.G.C. case, extending the concept of dispute resolution by High-Powered Committee to amicable resolution of disputes involving the State Governments and their Instrumentalities.

5. The question of requirement of clearance from CoD was considered by a five Judge Constitution Bench in Electronics Corporation of India Ltd. v. Union of India. By a judgment and order dated 17th February, 2011 reported in Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, the constitution Bench recalled the earlier orders of the Supreme Court observing as follows:

9. The idea behind setting up of this Committee, initially, called a High-Powered Committee (H.P.C.), later on called as "Committee of Secretaries" (CoS) and finally termed as "Committee on disputes" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house committee [see para 3 of the order dated 7-1-1994 (supra). Whilst the principle and the object behind the aforestated Orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation. We have already given two examples hereinabove. They indicate that on same set of facts, clearance is given in one case and refused in the other. This has led a P.S.U. to Institute a SLP in this Court on the ground of discrimination. We need not multiply such illustrations. The mechanism was set up with a laudatory object. However; the mechanism has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases there could be overlapping of jurisdictions between, let us say, S.E.B.I. and Insurance regulators. Civil appeals lie to this Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by CoD. in such cases, grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario indicated above, we are of the view that time has come under the above circumstances to recall the directions of this Court in its various orders reported as (i) Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, , dated 11-10-1991, (ii)

(2004) 6 SCC 437, dated 7-1-1994, and (iii) Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others, , dated 20-7-2007.

10. In the circumstances, we hereby recall the following Orders reported in:

(i) Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, , dated 11-10-1991 [ 1992 (61) ELT 3 (SC)

(ii) Oil and Natural Gas Commission Vs. Collector of Central Excise, , dated 7-1-1994 : [1994 (70) E.L.T. 45 (S.C.)]

(iii) Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others,

(iv) For the aforestated reasons, I.A. No. 4 filed by the assessee in Civil Appeal No. 1903/2008 is dismissed.

6. The order of the Hon''ble Supreme Court which required CoD clearance having been recalled, the learned Tribunal patently erred in dismissing the said application and the appeal on the purported ground that SAIL had not produced evidence of having applied for clearance from the CoD or on the ground that SAIL had not produced any clearance from the CoD.

7. As held by the Supreme Court in the case of M.A. Murthy Vs. State of Karnataka and Others, , a decision of the Supreme Court enunciating a principle of law is applicable to all cases, irrespective of the stage of pendency thereof, because it is assumed that what is enunciated by the Supreme Court, is in fact, the law from the inception unless, of course, the Supreme Court expressly indicates that the decision would have prospective effect. May be, as contended by Mr. Roy, the appeal was filed before 17th February, 2011 when the Constitution Bench judgment of the Supreme Court recalling the earlier orders was pronounced. The orders whereby clearance was required having been recalled, the appeal and the stay application could not have been dismissed on the ground of want of clearance or want of an application for clearance.

8. The appeal has been dismissed on the sole ground that it had been filed without obtaining permission from the Committee of Disputes. The short question of law involved in this appeal is whether an appeal would be dismissed by the learned Tribunal, only on the ground that approval of the Committee of Disputes had not been obtained.

9. The question whether an appeal can be dismissed on the sole ground that the appeal had been filed without permission from the Commissioner of Disputes has been decided against the revenue and in favour of the assessee in an unreported judgment and/or order dated 26th April, 2013 of an earlier Division Bench of this Court in G.A. No. 996 of 2013, CEXA No. 4 of 2013 Bharat Sanchar Nigam Ltd. Vs. Commr. of C. Ex. and Service Tax, Siliguri, .

10. Mr. Pradip Kr. Roy appearing on behalf of the revenue cited a judgment and/or order dated 11th January, 2013 of the Division Bench of Delhi High Court in Air India Limited v. Union of India & Ors. reported in 2013-TIOL-70-HC-DEL-CUS. where the Division Bench held that after the judgment of the Supreme Court in Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, there was no necessity for obtaining any clearance from the Committee of Disputes.

11. The judgment of the Delhi High Court in Air India Limited (supra) is of no assistance to Mr. Roy since the Division Bench was not concerned with a case such as this which had been filed prior to the date of delivery of the judgment of the Supreme Court in Electronic Corporation of India Limited (supra) but had still been pending.

12. A judgment is a precedent for the issue of law that is raised and decided. Words in a judgment cannot be read out of context and construed in isolation. In Air India Limited (supra) the learned Tribunal had dismissed the appeal just one day after the decision of the Supreme Court possibly without knowledge of the order of the Supreme Court. The Division Bench of the Delhi High Court found no infirmity in the impugned order of the learned Tribunal whereby the learned Tribunal had rectified its mistake by reviving the appeal by its order dated 30th April, 2012 impugned before the Division Bench.

13. By an order dated 3rd January, 2013 in WP No. 1009 of 2012 [ Steel Authority of India Ltd. Vs. CESTAT, ] in the case of this very appellant, one of us (Indira Banerjee, J.) sitting singly held:

as held by the Supreme Court in the case of M.A. Murthy Vs. State of Karnataka and Others, a decision of the Supreme Court enunciating a principle of law is applicable to all cases, irrespective of stage of pendency thereof because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from the inception unless, of course, the Supreme Court expressly indicates that the decision would have prospective effect. May be, as contended by Mr. Maity, the appeal was filed before 17th February, 2011 when the Constitution Bench judgment of the Supreme Court recalling the earlier orders was pronounced. The orders whereby clearance was required having been recalled, the appeal and the stay application could not have been dismissed on the ground of want of clearance or want of in application for clearance.

14. The judgment and/or order of the learned Tribunal No. M-510/KOL/2012, dated 17th September, 2012 in the case of M/s. Burn Standard Co. Ltd. v. C.C.E., Bolpur does not in our view lay down the correct proposition of law. The appeals which had already been dismissed prior to 17th February, 2011 on the ground of want of permission of Committee of Disputes to file the appeal do not automatically revive. However, so far as pending proceedings are concerned the same cannot be dismissed on the ground of want of permission, since earlier judgments of the

Supreme Court requiring such permission have been recalled by the order dated 17th February, 2011.

15. In other words, on or from 17th February, 2011 onwards there was no existence of those orders and hence no question of dismissal of any pending appeal on the ground of want of permission of Committee of Disputes.

16. The impugned order of the learned Tribunal may have been passed on 22nd April, 2013, four days before the Division Bench delivered its judgment in Bharat Sanchar Nigam Ltd. v. Commissioner of Central Excise & Service Tax, Siliguri, Commissionerate. The learned Tribunal ought, to have appreciated that its Larger Bench judgment in the case of Burn Standard could no longer be good law in view of the judgment and/or order of the Single Bench of this Court dated 3rd January, 2013 in W.P. No. 1009 of 2012 (Steel Authority of India Limited v. Customs, Excise and Service Tax Appellate Tribunal, East Zone), which was not interfered with or set aside by any higher forum.

17. The appeal is thus allowed. The impugned judgment and/or order is set aside. The learned Tribunal is directed to dispose of the appeal/stay application as expeditiously as possible and in any case within two months from the date of communication of this order.