

Non-reportable
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 1980-1981 OF 2011
(Arising out of S.L.P. (C) NOs.13619-13620 OF 2008)

M/s Hussnain International Appellant

Versus

Union of India & Ors. Respondents

ORDER

A. K. PATNAIK, J.

Leave granted.

2. These are appeals against the order dated 24.09.2007 of the Division Bench of the High Court of Delhi in L.P.A. No.1098 of 2006 and against the order dated 02.11.2007 of the Division Bench of the High Court of Delhi in Review Application No.396 of 2007.

3. The facts giving rise to these appeals briefly are that the appellant carries on the business of export of brass art-ware and other Indian handicrafts. On 09.10.1991, two Advance Licences were issued to the appellant for import of

240 MT's of brass dross/ash against each of the licences for the C.I.F. value of Rs.24,64,800/- and Rs.24,64,000/- respectively with the condition to export of 80 MT's of brass art-ware against each of the licences for FOB value of US dollars 2,37,082.95 and US dollars 2,38,545 within a period of 12 months. As the appellant failed to discharge its export obligation under the licences, two show-cause notices dated 26.09.1996 were issued to the appellant and its partners to show cause why penalty under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 (for short 'the Act') will not be imposed on it. Thereafter, two orders dated 24.05.2002 and 27.06.2002 were passed by the Adjudicating Authority imposing a penalty of Rs.1,30,00,000/- in respect of each of the two licences on the appellant and its partners under Section 11(2) of the Act. Aggrieved, the appellant filed two appeals before the Appellate Authority against the two orders of penalty. Alongwith the appeals, the appellant also filed applications for stay of recovery of the penalty amounts but the appellant was intimated to make pre-deposit of Rs.5,00,000/- towards the penalties after which the appeals will be decided by the

Appellate Authority on merits. The appellant failed to make the pre-deposit of Rs.5,00,000/- and consequently the appeals were dismissed.

4. The appellant then filed Writ Petition (C) No.8058 of 2006 in the High Court of Delhi praying for setting aside the orders of the Appellate Authority and the orders of the Adjudicating Authority and for directing extension of time for making the pre-deposit of Rs.5,00,000/- and for granting extension to the appellant to meet its export obligations. By order dated 18.05.2006, the learned Single Judge dismissed the writ petition. The appellant challenged the order of the learned Single Judge before the Division Bench of the High Court in L.P.A. No.1098 of 2006. The Division Bench of the High Court passed the impugned order dated 24.09.2007 allowing the appellant to deposit a sum of Rs.20,00,000/- in each of the two appeals within 8 weeks and further directing that on such deposits being made the Appellate Authority may dispose of the appeals on merits. Thereafter, the appellant filed Review Application No.396 of 2007 which was also dismissed by the impugned order dated 02.11.2007 of the Division Bench of the High Court.

5. We have heard learned counsel for the parties and we are of the considered opinion that the Division Bench of the High Court should not have passed the impugned order for deposit of Rs.20,00,000/- for each of the appeals when the Appellate Authority had directed the appellant to make pre-deposit for Rs.5,00,000/- for both the appeals. The second proviso to sub-section (1) of Section 15 of the Act states that in the case of an appeal against a decision or order imposing a penalty or redemption charges, no such appeal shall be entertained unless the amount of the penalty or redemption charges has been deposited by the appellant. The third proviso to sub-section (1) of Section 15 of the Act, however, states “*where the Appellate Authority is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose.*” Hence, under the Act discretion is vested in the Appellate Authority to dispense with a pre-deposit of penalty either unconditionally or subject to such condition as the Appellate Authority may impose. If in exercise of such discretion, the Appellate Authority in the present case

dispensed with the pre-deposit penalty of Rs.1,30,00,000/- in each of the two appeals subject to the appellant depositing a sum of Rs.5,00,000/-, the Division Bench of the Delhi High Court ought not to have enhanced the amount of pre-deposit to Rs.20,00,000/- for each of the two appeals.

6. As the two appeals of the appellant have not been heard on merits, we set aside the impugned order of the Division Bench of the High Court of Delhi and the order of the learned Single Judge and direct that in case the appellant deposits the sum of Rs.5,00,000/- as directed by the Appellate Authority within two months from today, the two appellate orders of the Appellate Authority will stand quashed and the appeal will be heard on merits afresh by the Appellate Authority.

7. With the aforesaid directions, the appeals are allowed.
No costs.

.....J.
(R. V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
February 21, 2011.