

**IN THE HIGH COURT OF BOMBAY**

**Notice Of Motion No. 194 Of 2019  
Customs Appeal No. 8 Of 2019**

**THE COMMISSIONER OF CUSTOMS, (NS-III)**

**Vs**

**SHIMNIT INFRASTRUCTURE PVT LTD**

**M S Sanklecha & S C Gupte, JJ**

**Dated: July 31, 2019**

**Appellant Rep by:** Mr Pradeep S Jetly

**Respondent Rep by:** None

**Cus** - Revenue has filed a notice of motion seeking stay of the order of the CESTAT on the ground that since their appeal has been admitted if no stay is granted of the impugned order of the CESTAT directing Revenue to grant refund to the respondent, the applicant Revenue would be saddled with payment of interest on the delayed payment.

**Held:** Mere admission of an appeal would not by itself lead to the stay of the order being appealed against before the High Court - admission of the appeal only indicates that the issue raised requires consideration and it does not in any manner reflect finally on the merits of the order of the Tribunal - The issue raised in appeal would require consideration which would be done at the final hearing of the appeal - In the present case, no circumstances have been shown which could justify denying the benefits available to the respondents by virtue of the impugned order of the Tribunal before the impugned order of the Tribunal has been fully considered at the final hearing of the appeal and set aside - Notice of motion dismissed: High Court [para 6, 7]

**Application dismissed**

**JUDGEMENT**

1. None appears for the respondent despite service. Affidavit of service is filed.
2. This motion has been taken out for stay of the order dated 11th December, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal) pending final disposal of its appeal by this Court.
3. The appellant - Revenue has filed an appeal in this Court under Section 130 of the Customs Act, 1962 (Act) against the impugned order dated 11th December, 2017 of the Tribunal. The appeal was admitted on 3rd June, 2019 on the following substantial questions of law :-

*"Whether on the facts and in the circumstances of the case and in law, was the Tribunal justified in directing refund, by holding that the amendment of 11.05.2007 prescribing time limit of six months for filling a refund claim would have no application?"*

4. Mr. Jetly, learned Counsel appearing in support of the motion for stay submits that as the appeal has been admitted a stay of the impugned order should be granted as a prima facie case in its favour exists. Further he submits that if no stay of the impugned order directing the Revenue to refund the amount as directed by the Tribunal is granted, the applicant would be saddled with payment of interest on the delayed payment.

5. The issue in appeal is whether the time limit provided for refund by virtue of Notification dated 11th May, 2007 would apply even in cases of refund application being filed consequent of order of the Authorities which was admittedly passed before 11th May, 2007. Thus, the appeal was admitted as the issue required detailed examination at the final hearing.

6. In the above facts, we are of the view that mere admission of an appeal would not by itself lead to the stay of the order being appealed against before this Court. The admission of the appeal only indicates that the issue raised in the appeal requires consideration and it does not in any manner reflect finally on the merits of the order of the Tribunal. The issue raised in appeal would require consideration which would be done at the final hearing of the appeal. In the present case, no circumstances have been shown which could justify denying the benefits available to the respondents by virtue of the impugned order of the Tribunal before the impugned order of the Tribunal has been fully considered at the final hearing of the appeal and set aside.

7. In the above view, we dismiss the motion. No order as to costs.