

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CENTRAL EXCISE APPEAL NO. 131 OF 2015

M/s. Hindustan Petroleum Corporation Ltd. }
} **Appellant**
versus
Commissioner of Central Excise } **Respondent**

Mr. M. H. Patil i/b. Ms. Padmavati Patil for
the Appellant.

Mr. Pradeep S. Jetly with Mr. Jitendra B.
Mishra for the Respondent.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- NOVEMBER 30, 2015

P.C. :-

Having heard Mr. Patil and Mr. Jetly and finding that similar questions as are formulated at page 8 of the Appeal are entertained and admitted by this Court, we admit this Appeal on the following substantial questions of law:-

(i) Whether the Tribunal was justified in refusing to restore the Appeal when Constitution Bench of Hon'ble Supreme Court in case of Electronics Corporation of India Ltd. [2011 (265) ELT 11 (SC)] has recalled its earlier orders and judgments dated 10th October, 1991, 7th January, 1994 and 20th July, 2007, requiring clearance from COD which would have retrospective effect?

(ii) Whether the Tribunal was justified in refusing to restore the Appeal impugned in the present case, while restoring similar Appeal in the case of Bharat Petroleum Corporation Ltd. vide order No. M/459/12/EB/C-II dated 27th

June, 2012 [2012 (285) ELT 268 (Tri. Mum)], when facts are similar?

(iii) Whether the Tribunal has erred in invoking the ratio of its Larger Bench judgment in Burn Standars (supra) which in turn followed Hon'ble Delhi High Court judgment in Gas Authority of India Ltd., the ration of which would support the Appellant's claim for restoration of Appeal, as its application before COD was under active consideration?

- 2) The Respondent waives service.
- 3) To be heard along with Central Excise Appeal No. 278 of 2013.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)