

**Commissionerate Vs. M/S.Brand Alloys Ltd.(Formerly Known as**

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**SooperKanoon Citation :** [sooperkanoon.com/1163708](http://sooperkanoon.com/1163708)

**Court :** Kolkata

**Decided On :** Aug-28-2014

**Judge :** Soumitra Pal

**Appellant :** Commissionerate

**Respondent :** M/S.Brand Alloys Ltd.(Formerly Known as

**Judgement :**

ORDER

SHEET GA NO.1130 OF 2014 CEXA NO.4 OF 2014 IN THE HIGH COURT AT CALCUTTA Special Jurisdiction(Central Excise) ORIGINAL SIDE IN THE MATTER OF : COMMISSIONER OF CENTRAL EXCISE, KOL-IV COMMISSIONERATE Versus M/S.BRAND ALLOYS LTD.(FORMERLY KNOWN AS M/S.VEEKEE ISPAT(P) LTD.) BEFORE: The Hon'ble JUSTICE SOUMITRA PAL AND The Hon'ble JUSTICE ARINDAM SINHA Date : 28th August, 2014.

MR.R.BHARADWAJ.MR.K.K.MAITI,ADVOCATES FOR APPELLANT MR.PRADIP KR.TARAFDER, MR.JOYDEEP SEN, MR.S.DUTTA, MR.H.ADHIKARI, ADVOCATES FOR RESPONDENT The Court : This is an application for stay of the judgment and order dated 25th November, 2013 passed by the Customs.Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Stay Petition no.E/S/736/2012 in Excise Appeal No.E/A/440/2012 arising out of order-in-original No.12/Commissioner/CE/Kol-IV/2012 dated 18.04.2012

(M/s.Brand Alloys Ltd.(formerly known as M/s.Veekee Ispat (P) Ltd.) versus Commissioner of Central Excise, Kol-IV, Commissionerate) whereby the Tribunal directed total waiver of predeposit of the dues adjudged and had stayed recovery during pendency of the appeal.

It was submitted by Mr.Bhardwaj substantial questions of law arise out of that interim order.

We find the issue relates to the operation and applicability of section 38A upon omission of section 3A of the Central Excise Act, 1944.

While passing the order the Tribunal had followed the judgment of the Gujarat High Court in Krishna Processors versus Union of India reported in 2012 (280) E.L.T.186 (Gujarat) since the Revenue could not place any judgment to the contrary.

We find from paragraph 4 of the impugned order the Gujarat High Court had dealt with the issue and following the said decision the Tribunal had directed total waiver of pre-deposit.

In our view as the Tribunal had followed the judgment in Krishna Processors (supra) and had passed the order, therefore, no substantial question of law arises.

Hence, the application and the appeal are disposed of.

However, we direct the learned Tribunal to hear out the appeal preferably within a period of three months from the date of presentation of a photostat certified copy of this order.

Urgent photostat certified copy of this order, if applied for, be given to the appearing parties on priority basis.

(SOUMITRA PAL, J.) (ARINDAM SINHA, J.) sb.

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