

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 116(04)2011

M/s. Skyline Infra-Tech Pvt.
Through Sh. S.K Gupta, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi
Through Sh. D.R Rao, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. D.R Rao, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 24.10.2019** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is

not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujurat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of CrI Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 09.09.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 439(4)2014

M/s. Deepak Flat Owners Association Appellant
Through Sh. S.K Gupta, Ld. Counsel for the Appellant

Vs.

APFC, Delhi Respondent
Through Sh. Atul Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Atul Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 10.06.2014** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order

and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating , the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced ,may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced."

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon'ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon'ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it's orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon'ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon'ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon'ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods &Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon'ble High Court of Gujurat have held that the observation made by the Hon'ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon'ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by

the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and mis interpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020,

leads to the only meaning that “A stay granted by any court” means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon’ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon’ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 26.05.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 264(4)2015

M/s. EURO Expo
Through None for the Appellant

Appellant

Vs.

APFC, Delhi
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 07.05.2015** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since

the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating , the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced ,may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced."

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon'ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon'ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it's orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon'ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon'ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon'ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon'ble High Court of Gujurat have held that the observation made by the Hon'ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon'ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by

the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed y this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and mis interpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013)have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020,

leads to the only meaning that “A stay granted by any court” means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon’ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon’ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 20.07.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 400(04)2016

M/s. ASG & Co.
Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through Sh. Narender Kumar, Ld.Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

The final arguments in this matter are complete as both the parties have agreed to file written notes of arguments as per the proceedings held on 28.03.2022 and the case is reserved for orders on 12.05.2022. Accordingly, the present petition for vacation of stay is rejected. The written notes of arguments filed on behalf of Ld. Counsel for the Respondent are taken on record.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 309(4)2017

M/s. M.R Enterprises
Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through Sh. D.R Rao, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

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Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. D.R Rao, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 24.05.2017** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end

on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujurat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any

order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 13.05.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208 ROUSE
AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 740(4)2016

M/s. S.R Tailors
Through Ms. Babita Proxy Counsel for the Appellant.

Appellant

Vs.

APFC, Delhi (N)
Through Sh. Gurumukh Singh Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

List the matter on the date already fixed i.e. 01.06.2022 for final arguments as the application for vacation for stay has already been decided vide order dated 15.03.2022.

(Presiding Officer)

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 951(4)2016

M/s. Datanet Associates Pvt. Ltd.
Through Sh. Raj Kumar, A/R for the Appellant
Vs.

Appellant

APFC, Delhi (N)
Through SH. Gurumukh Singh Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

List the matter on the date already fixed i.e. 01.06.2022 for final arguments as the application for vacation for stay has already been decided vide order dated 15.03.2022.

(Presiding Officer)

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 691(4)2013 &1230(4)2014

M/s. Bretton Woods Finlease Ltd. Appellant
Through Sh. S.K Khanna & Sh. H.D Sharma, Ld. Counsel for the Appellant

Vs.

APFC, Delhi Respondent
Through Sh. Narender Kumar. Ld. Counsel for the Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 26.09.2013** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end

on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujurat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any

order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 19.07.2022 for final arguments.

Presiding Officer

BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT

**INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/32/2019

M/s. N & N Chopra
Through Sh. Ashish Sharma Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 29.05.2019** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is

not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujurat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs, on a query made by the Central Board of Indirect Tax & Customs, submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants, the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of CrI Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC, by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months, unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para 36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay, merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 09.05.2022 for final arguments.

Presiding fficer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/64/2019

M/s. N & N Chopra
Through None for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 04.07.2019** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six

months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC, he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court, on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019) submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts, can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujarat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay, when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of CrI Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 09.09.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/39/2019

M/s. Oreal South Asia Pvt.
Through Sh. B.K Chhabra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (E)
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 15.05.2019** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six

months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC, he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court, on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019) submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts, can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujarat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay, when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 23.05.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/52/2019

M/s. Iceberg Engineering
Through Sh. Hemant Goel, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (N)
Through Sh. D.R Rao, Ld Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. D.R Rao, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 04.06.2019** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end

on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujurat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any

order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 01.06.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 568(4)2016

M/s. Janheet Food Safety Foundation
Through None for the Appellant

Appellant

Vs.

APFC, Delhi
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 13.05.2016** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six

months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC, he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court, on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019) submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts, can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujarat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay, when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 11.05.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 676(04)2016

M/s. Kay Ess Exports
Through Ms. Akanksha Narang, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (N)
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 15.06.2016** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay

in against the proceedings of a civil or criminal trial is operating , the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced ,may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujrat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any

order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 02.08.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.
Appeal No. 349(4)2015**

M/s. Supertech Engineering
Through Ms. Akanksha Narang, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi
Through Sh. Narender Kumar Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 11.05.2015** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The

speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC, he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court, on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019) submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts, can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujurat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay, when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 09.09.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/85/2019

M/s. Pommy Exports
Through None for the Appellant

Appellant

Vs.

RPFC, Delhi (S)
Through Sh. D.R Rao. Ld Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. D.R Rao, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 13.12.2019** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is

not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujurat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 01.06.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/104/2019

M/s. Gopish Pharma Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora Ld. Counsel for the Appellant

Vs.

RPFC, Delhi (N) Respondent
Through Sh. D.R Rao, Ld. Counsel for the Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. D.R Rao, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 26.11.2019** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order

and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating , the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced ,may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced."

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon'ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon'ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it's orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon'ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon'ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon'ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods &Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon'ble High Court of Gujurat have held that the observation made by the Hon'ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon'ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by

the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and mis interpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020,

leads to the only meaning that “A stay granted by any court” means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon’ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon’ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 01.06.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.
Appeal No. 116(4)2017**

M/s. Contentra Technologies India Pvt. Ltd.
Through None for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 22.02.2017** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end

on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujurat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any

order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 09.09.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/38/2018

M/s. Kee Pharma Ltd.
Through None for the Appellant

Appellant

Vs.

APFC, Delhi (N)
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 30.11.0218** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six

months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC, he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court, on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019) submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts, can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujarat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay, when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of CrI Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 23.05.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/102/2019

M/s. Kee Pharma Ltd.
Through None for the Appellant

Appellant

Vs.

APFC, Delhi (N)
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 08.01.2020** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is

not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujurat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 12.09.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/54/2019

M/s. Continental Constructions Ltd.
Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through Sh. Narender Kumar, Ld.Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 04.06.2019** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six

months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC, he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court, on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019) submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts, can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujarat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay, when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of CrI Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 12.09.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/43/2021

M/s. Seven Seas Hospitality Pvt. Ltd.
Through Sh Manish Malhotra, Ld. Counsel for the Appellant

Appellant

Vs.

CBT,RPFC, Delhi (N)
Through Ms. Shivangi Sharma, Proxy Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

Today the matter was listed for reporting compliance of the order to deposit Rs. 26 Lacs by way of FD. However, the Ld. Counsel for the Appellant has filed one application for granting extension in reporting full compliance along with the FDR amounting to Rs. 10 Lacs and he prayed for four more weeks for reporting the remaining 16 lacs Rupees. The Proxy Counsel appearing on behalf of the Respondent has submitted the return reply to this Tribunal filed by the Ld. Counsel for the Appellant for granting extension of time. Heard. In all fairness, this Tribunal extends the time for four more weeks for filing the FDR of the remaining amount due. List the matter on 01.06.2022 for reporting compliance. Interim orders to continue till next date of hearing.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 184(4)2014

M/s. Butterflies
Through None for the Appellant

Appellant

Vs.

APFC, Delhi
Through Sh. Manu Parshar,Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

There is one adjournment request on behalf of the Ld. Counsel for the Appellant. Granted. List the matter on 09.05.2022 for considering the maintainability of the appeal.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/73/2019

M/s. Nice International Ltd.

Appellant

Through:- for the Appellant

Vs.

RPFC-II, Delhi (E)

Respondent

Through Sh. Rajesh Kumar, Proxy Counsel for the Respondent

ORDER DATED :- 26/04/2022

List the matter again on 09.05.2022 for consideration of the
miscellaneous application.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/24/2019

M/s. Quami Patrika Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (N) Respondent
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 26/04/2022

Today the matter was listed for hearing on the restoration petition filed by the Ld. Counsel for the Appellant/Applicant. Heard in part. The Ld. Counsel for the Respondent wants some time to file written reply to this restoration application. Granted. List the matter on 17.05.2022 for consideration of the restoration application. Meanwhile, the Respondent Authority is directed not to take any coercive measure for recovery of the amount as mentioned in the impugned order till next date of hearing.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 604(4)2015

M/s. Pearson India Education Services Pvt. Ltd.
Through Sh. Aruneesh Singh, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (N)
Through Sh. Manu Parashar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

Heard in part. List the matter on 17.05.2022 for further arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 808(14)2016

M/s. Viraj Exports
Through Sh. Rajiv Shukla, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Noida
Through Sh. Narender Kumar Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 23.08.2016** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay

in against the proceedings of a civil or criminal trial is operating , the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced ,may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujrat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any

order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 09.09.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 265(14)2015

M/s. Mascot Foot Care
Through Sh. Rajiv Shukla, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Noida
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 01.06.2015** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is

not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Appex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujrat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of CrI Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the

stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 04.05.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.
Appeal No. D-2/31/2019**

M/s. Rekhta Foundation
Through Sh. Raj Kumar A/R for the Appellant

Appellant

Vs.

APFC, Noida
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 26/04/2022

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order **dt 14.12.2020** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the

stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced ,may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC , he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court ,on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019)submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts , can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods &Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujrat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay , when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of

Indirect Tax & customs, submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants, the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC, by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months, unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para 36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay, merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 09.09.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.
Appeal No. D-2/14/2022**

M/s. BHP Infrastructure Pvt. Ltd. Appellant
Through Sh. J.R Sharma, Ld. Counsel for the Appellant

Vs.

APFC, Faridabad Respondent
Through Sh. Chakardhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 26/04/2022

Office report seen. After due consideration this Tribunal is of the view that the appeal is filed within time, hence, the appeal is admitted for hearing. List the matter on 18.05.2022 for consideration of the application filed for granting stay. Meanwhile, the respondent authority is directed not to take any coercive measure for recovery of the amount as mentioned in the impugned order till next date of hearing.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 910(16)2012

M/s. Iffco Tokyo General Insurance Co. Ltd.
Through :-

Appellant

for the Appellant

Vs.

APFC, Gurgaon

Respondent

Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

ORDER DATED :- 26/04/2022

List the matter on 24.08.2022 for consideration of the
miscellaneous application filed by the Ld. Counsel for the Appellant.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/19/2018

M/s. National Association for the Blind Appellant
Through Sh. S.K Khanna & Sh. H.D Sharma, Ld. Counsel for the Appellant

Vs.

APFC, Faridabad Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 26/04/2022

Arguments heard in part. List the matter on 18.05.2022 for
continuation of the arguments in this case.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/01/2019

M/s. Seasons Textiles

Appellant

Through Sh. Haribansh Manav, Ld. Counsel for the Appellant

Vs.

APFC- Noida & RPFC- Noida

Respondent

Through :-

for the Respondent

ORDER DATED :- 26/04/2022

Due to paucity of time the matter could not be taken up. List the matter on 24.08.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/17/2019

M/s. Arcotech Limited
Through Sh. Abhishek Shukla, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Gurgaon
Through:-

for the Respondent

Respondent

ORDER DATED :- 26/04/2022

Due to paucity of time the matter could not be taken up. List the matter on 23.08.2022 for final arguments.

Presiding Officer