Before Ajay Kumar Mittal & Manjari Nehru Kaul, JJ.

BCL INDUSTRIES LIMITED—*Petitioner*

versus

UNION OF INDIA AND OTHERS—*Respondents*

CWP No. 320 of 2019

February 27, 2019

Constitution of India, 1950—Art. 226—227— Central Excise Tariff Act, 1985—First Schedule —Bias—Refined oil, its by-products—Gadh/Soap Stock, Fatty Acid etc.—Exempt from Central Excise Duty—Demand raised for duty on Fatty Acid, Wax and Gum—Held, not manufactured excisable goods by Larger Bench of Tribunal—Commissioner (Appeals) wife of appellant Commissioner—Passing orders contrary to Larger Bench decision—Plea of Bias—Broad principles of bias laid—Case transferred to another Commissioner (Appeals).

Held that in view of the settled legal position enunciated above, the following broad principles emerge:-

> i) Question of bias depends on the facts and circumstances of each case. It cannot be an imaginary one or come into existence by an individual's perception based on figment of imagination.
>
> ii) Justice should both be done and be manifestly seen to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.
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> iii) To adjudge the attractability of plea of bias, a court is required to adopt a deliberative and logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition.

(Para 11)

Further held that the petitioner alleges that Mrs. Charul Baranwal is holding the charge of Commissioner (Appeals) Ludhiana and she is wife of Commissioner who had reviewed order passed by Assistant Commissioner and directed him to file appeal on his behalf before Commissioner (Appeals). Thus, the husband is holding charge of appellant whereas the wife is holding charge of appellate authority.

Consequently, there is reasonable apprehension in the mind of the petitioner about the bias.

(Para 12)

Further held that in view of the factual position in the present case and the settled position of law on the issue, as narrated above, the writ petition is allowed. The communication dated 5.11.2018, Annexure P.8 passed by Chief Commissioner, CGST, Chandigarh in refusing to transfer appeal of the petitioner from Commissioner (Appeals) Ludhiana to some other Commissioner (Appeals) is set aside.

(Para13)

Jagmohan Bansal, Advocate
for the petitioner.

Sourabh Goel, Advocate
for the respondents.

AJAY KUMAR MITTAL, J.

(1) Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing communication dated 05.11.2018, Annexure P.8 whereby the Chief Commissioner, Central Goods and Services Tax (Chandigarh Zone), Chandigarh (CGST) has refused to transfer appeal from Commissioner (Appeals) Ludhiana to some other Commission (Appeals). Further prayer has been made for restraining respondent No.4 - Commissioner (Appeals), Ludhiana from deciding the appeal.

(2) A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is engaged in the manufacture of Vanaspati Refined Oil falling under 2Chapter Heading 15 of the First Schedule to Central Excise Tariff Act, 1985. The refined oil is manufactured from crude rice bran oil and is exempt from Central Excise Duty vide notification dated 01.03.2006. During the course of refining of crude oil, Gadh/Soap Stock, Fatty Acid etc. emerge which are also exempt from payment of excise duty. The respondent department issued a number of show cause notices to all the refined oil manufacturers raising demand of Central Excise Duty on Fatty Acid, Wax and Gum which were cleared without payment of duty. Opinion was formed by the respondent-department that fatty acid, gum, gadh were subject to Excise Duty and refined oil manufacturers were wrongly clearing these products without payment of duty. Few of the manufacturers filed appeals before the Tribunal which were decided

in different manner and resultantly, the matter went to the larger bench of the Tribunal. The respondent department raised issue of levy of excise duty on fatty acid. The Tribunal concluded that fatty acids, gums and waxes were nothing but waste arising during the course of refining of rice bran oil and the same could not be considered as manufactured excisable goods. The said items were held entitled to the benefit of exemption notification dated 18.5.1995. The appeal of the petitioner involving the same issue came up for consideration before Commissioner (Appeals), Ludhiana who vide order dated 18.4.2018, Annexure P.2 inspite of decision of the larger bench of the Tribunal concluded that the petitioner was liable to pay duty on fatty acids, gums and Gadh because it was manufacturing plastic and tin containers which were captively consumed. One appeal of the petitioner and two appeals of the department came up for consideration before Commissioner (Appeals), Ludhiana who vide order dated 16.7.2018, Annexure P.3 held that the petitioner was liable to pay duty on fatty acids, waxes, gums etc. The Commissioner (Appeals) reiterated its earlier findings and did not think it appropriate to consider submissions of the petitioner whereby the petitioner had pointed out that the order was not passed on the basis of the said issue and earlier Commissioner (Appeals) had already settled the issue of manufacture of plastic containers in its favour. The officials of the Directorate General of Central Excise Intelligence (DGCEI) searched premises of the petitioner on 29.7.2011 and seized 1238 kg stearic flakes. The DGCEI initiated investigation against the petitioner alleging that they were getting invoices without material and using the same to sell their products. The DGCEI after concluding its investigation issued a show cause notice raising demand of `14,18,645/- as wrongly availed cenvat credit and `11,56,622/- on account of alleged clearance of stearic acid flakes clandestinely. The petitioner filed reply to the show cause notice and Assistant Commissioner vide order dated 14.11.2017, Annexure P.4 dropped the show cause notice. Vide order dated 20.2.2018, Annexure P.5, the Commissioner, GST Commissionerate, Ludhiana reviewed the order passed by the Assistant Commissioner and directed him to file an appeal on his behalf before the Commissioner (Appeals) - respondent No.4. The Assistant Commissioner in compliance to review order dated 20.2.2018 preferred an appeal before the Commissioner (Appeals) which is pending adjudication. The Commissioner (Appeals) fixed the matter for personal hearing on 20.9.2018, 9.10.2018 and 23.10.2018. Mrs. Charul Baranwal is holding charge of Commissioner

(Appeals) who is wife of Commissioner who had reviewed the order passed by Assistant Commissioner and directed him to file appeal before Commissioner (Appeals). Thus, the husband is holding charge of appellant and the wife is holding charge of Appellate Authority. Though appeal was filed in the name of Assistant Commissioner but he had just complied with the order of the Commissioner. According to the petitioner, on earlier occasion, the Commissioner (Appeals) decided the appeals contrary to the decision of the larger Bench of the Tribunal. Therefore, the petitioner vide letter dated 29.9.2018, Annexure P.7 requested the Chief Commissioner, CGST, Chandigarh to transfer appeal from Mrs. Charul Baranwal to some other Commissioner (Appeals) on the ground that the wife cannot hear appeal when husband is appellant. The Chief Commissioner vide letter dated 5.11.2018, Annexure P.8 declined the request of the petitioner holding that the petitioner may file appeal before the higher Appellate Authority against the order of Commissioner (Appeals) who is an independent quasi judicial authority and bound to decide the appeal without any bias or ill feeling. On account of declining of request of the petitioner by the Chief Commissioner, the petitioner vide letter dated 23.11.2018, Annexure P.9 requested Chairman, CBIC to transfer appeal to some other Commissioner (Appeals) in the interest of justice. A number of appeals have already been transferred from one Commissioner (Appeals) to another. The Commissioner (Appeals) vide notice dated 18.12.2018, Annexure P.10 fixed the matter for hearing on 10.1.2019. According to the petitioner, the appeal which is pending before Commissioner (Appeals) Ludhaina has been filed on the basis of review order passed by Mr. Baranwal who is husband of Mrs. Charul Baranwal holding charge of Commissioner (Appeals) which is clear conflict of interest and it is against the principles of natural justice as well as equity that appeal has been filed by husband and wife is acting as Appellate Authority. The petitioner has no hope and trust that respondent No.4 could decide the appeal in fair and unbiased manner and thus prays that the appeal should be heard by some other Commissioner (Appeals) Hence the instant writ petition by the petitioner before this Court.

(3) A written statement has been filed on behalf of respondent Nos. 1 to 4 through Commissioner (Appeals), CGST, Ludhaina wherein it has been inter alia stated that the appeal filed by the petitioner was rightly dismissed by the Commissioner (Appeals), Ludhiana. It was observed that the finding of the larger bench of the Tribunal in its order dated 30.1.2018 was on the issue regarding the benefit of exemption

notification dated 18.9.1995 to the refined oil manufacturers and the products such as fatty acid, acid oil, gums, wax and gadh oil etc. were incidental products and were nothing but waste and, therefore, covered by the exemption notification. Further, as per proviso to the notification dated 18.5.1995, the benefit was not available, if the factory was also manufacturing other excisable goods other than the exempted goods. Therefore, as the petitioner was also manufacturing plastic and tin containers which were excisable goods and chargeable to central excise duty though they were capitvely consumed, the benefit of the exemption notification was held to be not available to the petitioner. It has been further stated that the order reviewing the order in original dated 14.11.2017 on the issue of wrong availment of cenvat credit was dated 20.2.2018 and the appeal was filed on 12.3.2018 i.e. prior to the decision of the Commissioner (Appeals) dated 18.4.2018 and 16.7.2018. The posting of Shri Ashutosh Baranwal and Mrs. Charul Barnawal was ordered as per transfer policy. There is no instruction of the Central Board of Excise and Customs which prohibits the posting of spouse as the appellate authority where the husband is posted as the Executive Commissioner. There is no bias feeling against the petitioner and the appeals are decided in accordance with law. There have been instances in the past where Commissioner (Appeals) and Executive Commissioners have been posted in the same jurisdiction on spouse ground in the department. On these premises, prayer for dismissal of the petition has been made.

(4) We have heard learned counsel for the parties.

(5) The issue in the present case relates to the transfer of appeal of the petitioner from Commissioner (Appeals) Ludhiana to some other Commissioner (Appeals) on the ground that wife is holding the charge of Commissioner (Appeals) and the officer who reviewed the order passed by the Assistant Commissioner and directed him to file appeal on his behalf before the Commissioner (Appeals) is her husband. Thus, there is reasonable apprehension in the mind of the petitioner about bias in deciding his appeal pending before Commissioner (Appeals), Ludhiana.

(6) Before adjudicating the controversy involved in the present case, the settled legal position on the doctrine of bias may be noticed. Bias is one of the limbs of natural justice. The doctrine of bias emerges from the legal maxim *nemo debet esse judex in propria causa.* It applies only when the interest attributed to an individual is such so as to tempt him to make a decision in favour of or to further his own cause.

There may not be case of actual bias or an apprehension to the effect that the matter most certainly will not be decided or dealt with impartially but where the circumstances are such so as to create a reasonable apprehension in the minds of others that there is likelihood of bias affecting the decision, the same is sufficient to invoke the doctrine of bias. Question of bias depends on the facts and circumstances of each case. It cannot be an imaginary one or come into existence by an individual's perception based on figment of imagination. While dealing with the plea of bias advanced by the delinquent officer or an accused, a court or tribunal is required to adopt a rational approach keeping in view the basic concept of legitimacy of interdiction in such matters. It is to be kept in mind that what is relevant is actually the reasonableness of the apprehension in this regard in the mind of such a party or an impression would go that the decision is dented and affected by bias. To adjudge the attractability of plea of bias, a tribunal or a court is required to adopt a deliberative and logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition.

(7) Learned counsel for the petitioner relied upon certain decisions in support of his claim. In ***B.Raja Gopal*** versus ***General Manager, Nizam Sugar Factory Limited and another***[1] the issue with regarding to natural justice and bias came up for consideration before Andhra Pradesh High Court, wherein two broad principles were discussed i.e. no one should be made a Judge in his own case or rule against bias; and no one should be condemned unheard. The relevant observations read thus:-

> "12. The rules of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power. The court presumes that the requirements are implied in the absence of indication to the contrary in the Act, confirming the power or in the circumstances in which the Act is to be applied.
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> The rules requiring impartial adjudications and fair hearing can be traced back to medieval precedents, and indeed, they were not unknown in the ancient world. These principles were regarded as part of immutable order of things, so that in theory even the power of legislature could not alter them.

[1] 1996 LIC 1913

Chief Justice Coke in Dr. Bonham's case (8 Co. Rep. 113b at 118a extracted from Wade's Administrative Law) said that Court could declare an Act of Parliament void if it made a man Judge in his own case, or other wise "against common right and reason".

Natural Justice is summed up as fair play in action. The principle was applied with great restraint till 1963 until land-mark Judgment was rendered by House of Lords in **Ridge v. Baldwin (1964) AC 40: (1963) 2 WLR 935: (1963) 2 All ER 66**. The House of Lords made it clear that duty to act judicially arose directly from the power of an agency to 'determine questions' affecting the rights.

The two basic principles of natural justice are:

1)**NEMO JUDEX IN CAUSA SUA**

(No one should be made a Judge in his own case or rule against bias)

2) AUDI ALTERAM PARTEM

(Hear the other party, or the rule of Fair Hearing or the Rule no one should be condemned unheard)

18. In the instant case we are concerned with the first principle. Prof. Wade elucidated the principle as follows:

> **"Nemo Judex in Re Sua"** - a Judge is disqualified for determining any case in which he may be, or may fairly be suspected to be, biased. So important is the rule that Coke supposed, as we have seen, that it should prevail even over an Act of Parliament.

19. Lord Hewart C.J, founded the rule in **Rex** versus **Sussex (1924) 1 KB 256** thus:

> "… a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

The learned Chief Justice observed:

> "Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."

This being the content of the rule, in its application, proof of existence of bias is not insisted upon. It is more concerned with how justice is administered than with the substance of justice. Sharing the concern Slade, J., speaking for the Queen's Bench Division in ***R.*** versus ***Camborne Justices*, (1954) 2 All ER 850 to 855 : 98 SJS 77** said that its continued and inappropriate application may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done. The application of this rule has been aptly described by Garner as under:

> "The natural justice 'bias' rule looks to external appearance rather than to proof of actual improper exercise of power. If the reasonable observer would have the requisite degree of suspicion of bias in the desion-maker then that decision can be challenged. It is a matter of courts ensuring that justice is seen to be done."

The rule against bias is an intrinsic requirement of the administration of justice. Breach of this rule disqualifies a judge/Arbitrator to adjudicate the dispute before him and if the judge/Arbitrator had already adjudicated upon it, renders the adjudication null and void.

That the rule against bias apply with all vigour to courts and Tribunals, judicial proceedings and quasi-judicial proceedings; and also to those who are entrusted with the duty of adjudicating the rights of the parties, like arbitrators, is universally accepted principle. In ***Rex*** versus ***Sussex, (1924) 1 KB 256*** (supra), claim of damages was made by consequent upon collision which took place between the motor cycle driven by M and a motor cycle and side car driven by W.W alleged that he and his wife suffered injuries due to negligence of M. The Police also took out summons against M for dangerous driving of motor cycle. After the hearing of the case, the Justices retired to consider their decision and along with them the deputy clerk also retired with a view to assist them, should they desire to be advised on any point of law. The Justices did not consult him. They convicted M, the applicant, and imposed a fine of £ 10 and costs. It was then brought to the notice of the Justices that

the deputy clerk was a brother of solicitor of W. The question before the court was, whether the judgment was invalidated on account of bias. Lord Hewart C.J, with whom other Law Lords concurred, held that decision was invalidated due to bias."

(8) In ***K.B.Sathyanarayana Rao and others*** versus ***State of Karnataka and others***[2] it was held by the Karnataka High Court that if a member of a Tribunal is related to one of the parties then it is a clear case of bias. The observance of rules of natural justice require that there should be fair hearing and that person should not preside over a Tribunal. If such a person participates in the proceedings of the Tribunal, the proceedings will be clearly vitiated. The relevant observations read thus:-

> "3…….The allegation made in this writ petition that the said Honnappa had throughout participated in the proceedings has not been disputed. The order passed by the Tribunal and produced in this case does not bear the signature of the said Honnappa. If, in fact, the Said Honnappa had not participated and kept himself out from the very commencement of the proceedings, it should have been so stated in the order. A counter-affidavit should have been filed supporting such a stand. When one of the parties is closely related to a Member of the Tribunal, it is clear case of bias. The observance of the rules of natural justice requires that there should be fair hearing and fair hearing means that a person who is closely related to a party ought not to preside over a Tribunal. If such a person participates in the proceedings of the Tribunal and does not keep himself out from the commencement, the proceedings are clearly vitiated."

(9) In ***Union of India (UOI) and others*** versus ***Sanjay Jethi and others***[3] it was held that question of bias depends on the facts and circumstances of each case. It cannot be an imaginary one or come into existence by an individual's perception based on figment of imagination. The relevant observations read thus:-

> "33. At this juncture, we may refer with profit to Halsbury's Laws of England, 4th Edn., Vol. 2, para 551, where it has been observed:

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[2] AIR 1977 Karnataka 221

[3] (2013) 16 SCC 116

The test for bias is whether a reasonable intelligent man, fully appraised of all the circumstances, would feel a serious apprehension of bias **R.** versus **Moore, ex parte Brooks (1969) 2 OR 677: (6 DLR (3d) 465**).

34. In ***Secretary to Government, Transport Deptt., Madras*** versus ***Munuswamy Mudaliar and another*****,** MANU/SC/0435/1988: 1988 (Supp) SCC 651, while dealing with the concept of bias as a part of natural justice, the Court observed that a predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias. There must be reasonable apprehension of that predisposition. The reasonable apprehension must be based on cogent materials.Needless to say, personal bias is one of the limbs of bias, namely, pecuniary bias, personal bias and official bias.

35.In ***Kumaon Mandal Vikas Nigam Ltd*****.** versus ***Girja Shankar Pant and Ors*****.** MANU/SC/0639/2000: (2001) 1 SCC 182, the Court referred to a passage from the view expressed by Mathew, J. in ***S. Parthasarathi*** versus ***State of A.P*** MANU/SC/0059/1973: **(1974) 3 SCC 459:**

> '16. The tests of "veal likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the inquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning,

> M.R in ***Metropolitan Properties Co. (F.G.C) Ltd.*** versus ***Lannon*** **(1968) 3 WLR 694 (WLR at p. 707].'**

Thereafter, the two-Judge Bench referred to the decision in ***Franklin*** versus ***Minister of Town and Country Planning*** MANU/UKHL/0002/1947: 1948 AC 87 and the sounding of a different note and the dilution of the principle by English Courts in ***R.*** versus ***Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte*** **(No. 2)** (2000) 1 AC 119 and the view expressed by Lord Hutton in the said case and thereafter proceeded to analyse the doctrine propounded in ***Locabail (U.K) Ltd*** versus ***Bayfield Properties Ltd. Locabail U.K Ltd.*** versus ***Bayfield Properties Ltd.***, MANU/UKCH/0009/1999: 2000 QB 451 where the Court of Appeal had upon detailed analysis of the decision in **R.** versus **Gough** 1993 AC 646 together with Dimes case House of Lords Cases 759, **Pinochet case** (supra) as also ***Ebner, Re*** (1999) 161 ALR 55 and the decision of the Constitutional Court of South Africa in ***President of the Republic of South Africa*** versus ***South African Rugby Football Union*** **(1999) 4 SA 147** opined that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The learned Judges took note of the fact that the Court of Appeal continued to give effect that everything will depend upon facts which may include the nature of the issue to be decided." Eventually this court ruled thus:

> "The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom—in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the court of appeal in Locabail case."

(10) In ***Bhajan Lal, Chief Minister, Haryana*** versus ***M/s Jindal Strips Limited***[4] it was held by the Apex Court that bias is the second limb of natural justice. No one should be a judge in what is to be regarded as *Sua Cause* whether he is a party to it or not. The decision maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may be in many forms. It may be direct, indirect, arising from a personal relationship or relation with the subject matter or from a tenuous one. The relevant observations read thus:-

> "21. Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as 'sua causa', whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one.
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> 22. In the case of non-pecuniary bias, as alleged in the instant case, regard is to be had to the extent and nature of interest. Then alone, the judge will be disqualified. In the leading case ***R. v. Sussex Justices***, ex p McCarthy, Lord Hewart observed thus:
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> "It is not merely of some importance but is of fundamental importance, that justice should both be done and be manifestly seen to be done.... Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."

(11) In view of the settled legal position enunciated above, the following broad principles emerge:-

> i) Question of bias depends on the facts and circumstances of each case. It cannot be an imaginary one or come into existence by an individual's perception based on figment of imagination.
>
> ii) Justice should both be done and be manifestly seen to be done. Nothing is to be done which creates even a suspicion

[4] (1994) 6 SCC 19

that there has been an improper interference with the course of justice.

iii) To adjudge the attractability of plea of bias, a court is required to adopt a deliberative and logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition.

(12) Adverting to the factual matrix in the present case, it may be noticed that the respondent department issued a show cause notice to the petitioner alleging clandestine removal of goods. The petitioner filed reply to the show cause notice. The Assistant Commissioner dropped the show cause notice. The Commissioner, GST Commissionerate, Ludhiana reviewed the order passed by the Assistant Commissioner vide order dated 20.2.2018 and directed him to file an appeal before Commissioner (Appeals), Ludhiana. The Assistant Commissioner in compliance thereto filed an appeal before the Commissioner (Appeals) which is pending before Mrs. Charul Baranwal, Commissioner (Appeals) Ludhiana. According to the petitioner, the respondents raised an issue of levy of excise duty on fatty acid etc. On account of different opinions, the matter came up before larger bench of the Tribunal. Vide order dated 30.1.2018, it was concluded that fatty acids, gums and waxes were nothing but waste and were entitled to benefit of exemption notification dated 18.5.1995. It was contended that on earlier occasion also, the appeal of the petitioner came up before Mrs. Charul Baranwal, Commissioner (Appeals) Ludhiana who vide order dated 18.4.2018 (Annexure P.2) inspite of the decision of the larger Bench of the Tribunal held that the petitioner was liable to pay duty on fatty acids etc. Still further, one appeal by the petitioner and two appeals of the Department were decided by Mrs. Charul Baranwal, Commissioner (Appeals) vide order dated 16.7.2018 (Annexure P.3) holding the petitioner liable to pay duty on fatty acids etc. The petitioner alleges that Mrs. Charul Baranwal is holding the charge of Commissioner (Appeals) Ludhiana and she is wife of Commissioner who had reviewed order passed by Assistant Commissioner and directed him to file appeal on his behalf before Commissioner (Appeals). Thus, the husband is holding charge of appellant whereas the wife is holding charge of appellate authority. Consequently, there is reasonable apprehension in the mind of the petitioner about the bias.

(13) In view of the factual position in the present case and the settled position of law on the issue, as narrated above, the writ petition is allowed. The communication dated 5.11.2018, Annexure P.8 passed by Chief Commissioner, CGST, Chandigarh in refusing to transfer appeal of the petitioner from Commissioner (Appeals) Ludhiana to some other Commissioner (Appeals) is set aside. The appeal of the petitioner is transferred from Commissioner (Appeals), Ludhiana to Commissioner (Appeals), Jalandhar, who will decide the same afresh after hearing the parties in accordance with law. Needless to say anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the controversy.

(Shubreet Kaur)