

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1394 OF 2008

Cummins India Limited and ors. Petitioners

VS

Electrical Inspector, and ors. Respondents

Adv. Mr. Ashish Rao, with Adv. H.N. Vakil and Adv. Rushil Mathur I/b y
Mulla and Mulla and C. B.C. for the petitioners.

Mr. Pravin Sawant, AGP for respondent/State.

**CORAM: ANOOP V. MOHTA AND
M. S. KARNIK, JJ.**

DATE : May 31, 2017

FINAL ORDER:

1 Taken out from final hearing board specifically fixed.

2 The learned counsel appearing for the Respondent, based upon the affidavit and the averments so made in the Petition and considering the fact that certain reasons are required to be dealt with on the factual aspects and so the questions/queries so raised by the Department, and even otherwise in view of specific provisions of the Appeal made in Section 7(A) and 7(B) of Bombay Electricity Duty Act,

1958, and as alternate remedy available, the writ petition be disposed of by permitting the Petitioner to move before the Statutory Authority by filing the Appeal.

3 After considering the rival contentions, we are inclined to dispose of the present writ petition by permitting the Petitioner to prefer an Appeal within six weeks. It is made clear that this Court admitted the petition on 31.03.2008, against the impugned order/show cause and the same is pending till this date, therefore, the Appellate Authority, if Appeal is filed, to deal with the Appeal on its own merits instead of dismissing it on the ground of delay and/or latches for not filing the Appeal within 60 days from the date of the receipt of the order. The Appellate Authority to consider the pendency of this writ petition and pass the order on merits including the defence so raised in the representation/reply already filed by the Petitioner which is not decided till this date.

4 The writ petition is disposed of accordingly in view of above. However, we are inclined to continue the interim relief granted by this Court on 31.03.2008 which has been continuing till

this date, till the decision of Appeal and four weeks further, if any adverse order is passed against the Petitioner.

5 The writ petition is accordingly disposed of in the above terms.

6 Rule made absolute accordingly.

7 No costs.

(M.S. KARNIK, J.)

(ANOOP V. MOHTA, J.)