IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.5221 OF 2003

The Commissioner,
Central Excises, Aurangabad,
N-5, Town Center, Cidco,
Aurangabad 431 003 ... PETITIONER

VERSUS

1. Ban Bro Steel Casting
Private Limited, C-17, M.I.D.C.,
Ahmednagar, through its
Managing Director,
At and District Ahmednagar.

2. The Customs, Excise & Gold (Control
Appellate Tribunal, West Zone Bench,
Mumbai, through its Registrar,
At and District Mumbai. ... RESPONDENTS

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Shri Alok Sharma, Advocate for petitioner
Shri A.P. Kolte, Advocate for respondent

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CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATED: 15th April, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. Mr. Sharma, the learned counsel for the petitioner relies on the judgment of the Madhya Pradesh High Court in a

case of <u>Commissioner of Central Excise Vs. Shree Synthetics,</u> reported in <u>(2007) 207 ELT 341 (MP)</u> to contend that gate passes issued after 1.4.1994 and endorsed subsequently though before 30.6.1994 will attract the duty. According to the learned counsel, even the appellate authority has come to the conclusion that the respondent is not entitled for the benefit of notification No.16/1994. According to the learned counsel the judgment in a case of Commissioner of Central Excise (referred supra) is squarely applicable. It was on a different premise the Commissioner had allowed the appeal of the respondent i.e. notice was issued prior to 31.3.1994.

2. Mr. Kolte, learned counsel for respondent submits that the gate passes issued are prior to 1.4.1994 but were endorsed subsequently, however, prior to 30.6.1994 and the respondent will be entitled for the benefit. Learned counsel submits that even the Board has accepted this practice and has issued a circular dated 19.11.2001, wherein it is laid down that the judgment of the Gujarat High Court is accepted and all the pending cases are to be decided following the ratio of the said judgment. The learned counsel further submits that, the petitioner has issued instructions/ circular, by virtue of which a

policy decision has been taken by the petitioner that the Department should not file appeal involving matters less than Rs.10,00,000/-.

3. We have considered the submissions canvassed by the counsel for respective parties. The show-cause-notice states as under :

> "Whereas it further appears that the said assessee under Modvat Credit of Rs.6,70,780=00 (Rs. Six Lakhs Seventy thousand seven hundred eighty only) during the period from 1.4.94 to 31.5.94 as per the enclosed Annexure and on verification of the duty paying documents pertaining to the said credit it is helica that the any mail duty paying documents were issued before 1-4-94, but they are not in the nature of assessee and were endorsed to them without mention of any date of endorsement therein and on the strength of such without date endorsements the assessee availed Modvat Credit. The relevant entries of the goods in RG-28-APTI, Register shows that the goods were received to the factory after 1.4.94 and because of these scheme the assessee inceprely availed Modvat Credit of Rs.6,10,780/- in endorsement of Rule 57-G as the said documents are not valid to availing Modvat Credit. Therefore, the inadmissible credits availed by the assessee is recoverable under Rule 57-I of the Rules, 1944.

4. The assessing officer, in the order observed as under :

> "From the Annexure to SCN it is my observation that the related gate passes have been issued in the

> month of Feb. and March 94 and the goods received in the factory in the month of April & May 94. In this regard I am of the view that had the gate passes been issued in the name of the assessee. Goods should have been received much earlier and then assessee's case would have been covered by Sr. No.12 in the table to the Notfn. 16/94 CE (NT).

5. As such, the assessing officer has held that, related gate passes issued in the month of February and March 1994 and the goods were received in the factory in the month of April 1994.

6. If this is the position, then the Circular dated 19.11.2001 squarely applies.

7. In light of the above, Writ Petition is dismissed. Rule discharged. No costs.

(A.I.S. CHEEMA, J.) (S.V. GANGAPURWALA, J.)