IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 53 OF 2014

M/s. Rallis India Limited	**}**	**Appellant**
versus		
The Commissioner of Central Excise	**}**	**Respondent**

Mr. V. Sridharan-Senior Advocate with Mr.Prakash Shah and Mr. Jas Sanghavi i/b. M/s. PDS Legal for the Appellant.

Mr. Pradeep S. Jetly for the Respondent.

CORAM :- S. C. DHARMADHIKARI & SUNIL P. DESHMUKH, JJ.

DATED :- MARCH 12, 2015

P.C. :-

This Appeal of the Assessee is directed against the order of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai in Appeal No. E/384/2009-Mum.

2) By the order dated 26th July, 2013, the Tribunal has passed the following order and direction:-

> "…..
> 14. Since the matter is more than 12 years old and have already been adjudicated thrice by the Commissioner and this is the third time the matter is coming up before the Tribunal, we direct the Commissioner to examine all the invoices now made available by the appellants and examine the same with reference to the law and decide about the duty liability without considering the 14 Declarations filed. Appellant shall extend all

> co-operation in the exercise. If the Commissioner from the analysis finds any other duty is recoverable the same may be communicated to the appellants. Similarly, if Commissioner finds any discrepancy in the details submitted by the appellant the same should be communicated to them and after giving the appellant an opportunity to rebut the same, the matter may be decided. The adjudication order to lists out clearly the issues and the amount involved on every issue and for any reason if any document or any details submitted by the assessee is not accepted findings should be given. The liability to penalty will be recomputed based upon the duty liability so arrived.
> ….."

3) We have heard both sides and both do not dispute the position as noted in para 14 above. We do not understand as to why a matter of twelve (12) years old having been adjudicated thrice by the Commissioner and brought before the Tribunal should have been again remanded. Further, when it was examination of some invoices and made available by the Assessee, then the Tribunal should have scrutinised them. Eventually, it was called upon to decide the question of law. The duty liability, if any, could have been ascertained and in the manner set out by parties. Both did not seek a remand but possibly desired that the Tribunal itself should put an end to the dispute between them. It is that request which is reiterated before us.

4) In these circumstances, we entertain this Appeal only on the following substantial question of law:-

> "Whether in the facts and circumstances and in law so also in the light of the conclusions recorded in para 14 and reproduced above, was the Tribunal justified in sending the matter back to the Commissioner and on a limited issue?"

5) By consent of both sides, we quash and set aside the order impugned in this Appeal. Both sides conceded that recording of reasons by this Court may tantamount to expression of opinion either way. They do not therefore insist on any reasons being assigned. The Tribunal shall now re-hear the Appeal of the Assessee on merits and in accordance with law. It shall give opportunity to both sides to rely on the available material and allow parties to produce only some statements and certificates, if necessary, to support the figures in the charts and tables produced on record. The Tribunal shall give opportunity to both sides to canvass their submissions and decide the Appeal uninfluenced by its earlier order or by any opinion therein. We clarify that we have not expressed any opinion on the rival contentions. The Appeal is accordingly disposed of. No costs.

(SUNIL P. DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**