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

CENTRAL EXCISE APPEAL NO.116 OF 2014

The Commissioner of Central Excise ..Appellant
Vs.
M/s Khandelwal Laboratories Ltd. ..Respondent.

Mr. A.S. Rao a/w Mr. Jitendra Mishra, for Appellant.

CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.

DATE : 13th April 2015.

P.C.:

1 The Revenue has approached this Court being aggrieved by the order dated 11th June 2013 passed by the leaned CESTAT thereby remanding the matter to the Original Authority for deciding afresh as to whether the Respondent-Assessee is entitled to claim the refund for a period subsequent to 1st August 1998. The issue arises out of the refund on the principles of unjust enrichment. This is second order litigation before this Court.

2 Shri Rao, the learned Counsel appearing for the Appellant-the Commissioner of Central Excise submits that in view of the direction issued by the learned CESTAT, the claim of the Respondent for refund would be considered only on the basis of Certificate of the Chartered Accountant. He submits that for claiming the entitlement of the refund, the entire balance-sheet and other accounts are required to be perused by the authority, and therefore, the impugned order is not sustainable.

3 We find the apprehension as expressed by the Revenue is not well-merit. The learned Tribunal has only relied on the contention of the respondent-assessee regarding Chartered Accountant's certificate along with statement showing details of average discount on the sale during the period in question and observed that it finds that the matter requires consideration by the adjudicating authority in view of the decision of the Bombay High Court ***[in the case of CCE, Mumbai-II Vs. Standard Drum & Barrel Mfg.Co, reported in 2006 (199(ELT 590 (Bom.)]*** and to consider the contentions of the respondent-assessee that burden of duty has not been passed on.

4 The learned Tribunal has not issued a direction to accept the case of the assessee only on the basis of Chartered Accountant's certificate. The learned Tribunal, after taking into consideration all relevant material and after taking into consideration the view taken by the Bombay High Court in the case cited above, has directed to reconsider the issue by the adjudicating authority.

5 In that view of the matter, we find no case is made out for interference. No substantial question of law arises in the present appeal. The appeal is dismissed.

(A.S. GADKARI, J.) **(B.R. GAVAI, J.)**