

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

CENTRAL EXCISE APPEAL NO.139 OF 2014

Venus International

...Appellant.

vs.

Commissioner of Central Excise,
Thane(1)

...Respondent.

Mr.Rajesh Ostwal with Mr. Akhilesh K. and Mr. Durtgaprasad Poojari and Ms.
Niyati Hakani i/by PDS Legal for the Appellant.
Mr. S.D.Bhosale for the Respondent.

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

DATE : 26TH FEBRUARY, 2015

PC:

This appeal of the assessee challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal West Zonal Bench at Mumbai dated 26 August 2013.

2) By this order the Tribunal has held that the appeal preferred by the appellant assessee before us is incompetent, not maintainable and therefore, it has no jurisdiction to entertain and try it.

3) Since the question of law arising from this order requires interpretation of legal provisions, this appeal is admitted on the following substantial question of law.

Whether in the facts and circumstances of the case, the Appellant Tribunal was justified in dismissing the appeal filed by the Appellants on the ground that the same is not maintainable under Section 35B of the Central Excise Act,1944?

4) Our attention has been invited to an order passed in Central Excise Appeal No.54 of 2014 dated 12 February 2015 by this Court's Division Bench, to which one of us (S.C. Dharmadhikari, J.) was a party and dealing with similar controversy. After analysis of the legal provisions this court decided that Tribunal's view is incorrect and erroneous in law. The appeal to the Tribunal was maintainable. The order impugned before the Tribunal did not fall within the proviso to Section 35B of the Central, Excise Act,1944.

5) Following the Division Bench order of this Court, we allow this appeal. We set aside the order passed by the CESTAT. We direct the CESTAT to restore the appeal on its file and decide the same on its own merits and in accordance with law.

(SUNIL P. DESHMUKH,J.)

(S.C. DHARMADHIKARI, J.)