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

CENTRAL EXCISE APPEAL NO. 128 OF 2014

The Commissioner of Service Tax	**}**	
Mumbai – I	**}**	**Appellant**
versus		
Citicorp Finance (India) Ltd.	**}**	**Respondent**

Mr. Pradeep S. Jetly with Ms. Suchitra Kamble
for the Appellant.

None for the Respondent.

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

DATED :- FEBRUARY 27, 2015

P.C. :-

This Appeal by the Revenue challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (CESTAT) dated 3rd December, 2013.

2) The Respondent/Assessee is rendering banking and other financial services under section 69 of the Finance Act, 1994. It holds a Service Tax registration. The Assessee filed a rebate claim dated 19th April, 2005 and for the period October, 2009 to March, 2010. We need not refer the details of this rebate claim. Suffice it to hold that the same was initially rejected by the order-in-original dated 9th July, 2012.

Thereafter, against this order, the Assessee approached the First Appellate Authority, namely, the Commissioner (Appeals) and he passed an order on 22nd December, 2012 partly sanctioning and allowing this rebate claim. That order, copy of which is at Annexure 'E', came to be challenged by the Revenue before the Tribunal and the Tribunal has held that the Revenue's Appeal is not maintainable. In a one paragraph conclusion, the Tribunal held that the provisions of Central Excise Act, 1944 would apply even to Service Tax claims and particularly the rebate. However, once the order passed by the Commissioner (Appeals) can be only challenged before the Central Government, then, the Revenue's Appeal before the Tribunal is not maintainable and is incompetent.

3) The Appeal therefore raises a substantial question of law. It is admitted on the following substantial question of law:-

> "Whether the CESTAT is right in law in holding that an appeal relating to the rebate claim is not maintainable before it?"

4) Mr. Jetly appearing for the Revenue has submitted that the Revenue has duly served the memo of this Appeal and the Annexures thereto on the Assessee and he relies upon the affidavit of service. Having perused that, we are satisfied that the Assessee is duly served. The Assessee is absent though duly served.

5) Mr. Jetly has brought to our notice an order passed on 12th February, 2015 by this Court in Central Excise Appeal No. 54 of 2014, to which, one of us (S.C.Dharmadhikari, J.) was a party.

6) Having perused this order, we are satisfied that identical question and controversy has been dealt with by this Court. The Appeal has been decided in favour of the Revenue by holding that the Revenue's Appeal before the Tribunal was maintainable and the CESTAT has jurisdiction to entertain and try it. We follow this very Judgment as it is fully applicable to the facts and circumstances in the present Appeal and the question of law.

7) Applying that Judgment, we hold that the Tribunal was in error in dismissing the Revenue's Appeal. The Revenue's Appeal was maintainable before the Tribunal. It shall now be registered and proceeded with in accordance with law. Beyond maintainability, we have not decided anything and all contentions on merits of the Appeal are kept open. The Appeal is disposed of accordingly.

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