IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9306 OF 2015

Tahnee Heights Co-op. Housing Society Ltd. .... Petitioners
Vs.
The Union of India & Others .... Respondents

Mr. Prakash Shah with Mr. Jas Sanghavi i/by M/s. PDS Legal for the Petitioners.
Mr. Swapnil Bangur with Mr. Sham Walve for Respondent Nos.2 and 3.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : AUGUST 08, 2016

P.C:

1. Having heard both sides and on perusing the writ petition and the annexures thereto, including the impugned order dated 24-8-2015 and the further order passed on 30-9-2015/8-10-2015, we are of the opinion that the controversy is squarely covered by the Judgment delivered by this Court on 18-7-2016 in Writ Petition No.2810 of 2015 {***M/s. Garden Silk Mills Limited Vs. The Union of India & Others***}.

2. It is also covered by a Division Bench order passed in the case of the very petitioners. To our mind, therefore, the Deputy Commissioner was in complete error in not following and applying these binding Judgments of this Court. They have not been followed and applied on the specious plea that the Revenue has carried the matter in the Hon'ble Supreme Court of India and it is pending therein. We do not approve of such a stand of the Revenue/respondents for the simple reason that a matter being pending in the Hon'ble Supreme Court does not mean the binding effect of this Court's order is lost or wiped out. We are, therefore, of the clear view that the Deputy Commissioner of Service Tax-II (Refund), Mumbai/respondent No.3 to this writ petition, was in total error in refusing to abide by the binding Judgment and Order of this Court.

3. The writ petition is, therefore, allowed. The impugned orders are quashed and set aside. The interest shall follow in terms of the two Division Bench Judgments. In the light of the fact that the Division Bench Judgments were pointed

out and in the case of the very petitioners, the refusal to apply and follow them by the further order of 30-9-2015/8-10-2015 justifies imposition of costs. The respondents shall pay the costs, quantified at Rs.50,000/-. The costs shall be paid within a period of six weeks from the date of receipt of a copy of this order. The concerned Commissioner is at liberty to recover the amount from the erring officials, including respondent No.3.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C. DHARMADHIKARI, J.)