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

CENTRAL EXCISE APPEAL NO. 76 OF 2004

The Commissioner of Central Excise	}	Appellant
versus		
M/s. Mahindra and Mahindra Ltd.	}	Respondent

WITH

CENTRAL EXCISE APPEAL NO. 39 OF 2006

The Commissioner of Central Excise	}	Appellant
versus		
M/s. Mahindra and Mahindra Ltd.	}	Respondent

WITH

CENTRAL EXCISE APPEAL NO. 96 OF 2006

The Commissioner of Central Excise	}	Appellant
versus		
M/s. Mahindra and Mahindra Ltd.	}	Respondent

WITH

CENTRAL EXCISE APPEAL NO. 129 OF 2006

The Commissioner of Central Excise	}	Appellant
versus		
M/s. Neon Laboratories Ltd.	}	Respondent

WITH

CENTRAL EXCISE APPEAL NO. 48 OF 2008

The Commissioner of Central Excise	}	Appellant
versus		
M/s. Neon Laboratories Ltd.	}	Respondents

Mr. Pradeep S. Jetly for the appellant in CEXA No. 129/2006.

Mr. A. S. Rao for the appellant in CEXA/48/2008.

Ms. P. S. Cardozo i/b. Mr. Vipul Bajpayee for the appellant in CEXA Nos. 76/2004, 39/2006 and 96/2006.

Mr. Prakash Shah with Mr. Jas Sanghavi i/b. M/s. PDS Legal for the respondents in all appeals.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- OCTOBER 10, 2016

P.C. :-

1. We have heard the learned counsel appearing for the parties. Each of these appeals were admitted on the substantial questions of law, which read as under:-

> "(a) Whether the CESTAT was justified in relying on the ratio of decision in the case of Vikran Ispat Holding that the said decision has not been contested by the Department which is contrary to the facts that the Department has already appealed against the said order?
>
> (b) Whether on the facts and circumstances of the case, the respondents are entitled to avail the MODVAT Credit on the input received from 100% EOU in spite of restrictions laid down in the first proviso to Notification No. 5 of 1994 CE (NT) dated 1st March, 1994, which restricts credit to the extent of duty which is equal to the additional duty leviable on goods under section 3 of the Customs Tariff Act, 1975?"

2. There is a subsequent development and which has been placed before us. In Central Excise Appeal Nos. 76/2004,

39/2006 and 96/2006, it has been stated that similar questions, as were arising from the order of the tribunal came to be considered in the case of *Vikram Ispat vs. Commissioner of Central Excise, Mumbai – III*[1] by a larger bench of the tribunal. The larger bench assembling at Delhi has, in that decision, resolved the controversy and it is stated to be in favour of the assessee and against the Revenue. Thereafter, its order came to be challenged before this court by Central Excise Application No. 1 of 2006. A Division Bench of this court dismissed the appeal of the Revenue on the ground that it is not maintainable before this court. The Revenue ought to have filed an appeal before the Hon'ble Supreme Court of India, as the questions raised pertain to rate of duty or the value of goods for the purpose of assessment.

3. Thereafter, the Revenue approached the Hon'ble Supreme Court of India, but in Civil Appeal No. 1546 of 2008 together with other appeals, this order of the High Court came to be affirmed by the Hon'ble Supreme Court of India on 20th November, 2015. That order is also brought to our notice.

4. We take a compilation of these orders on record and mark it as 'X' for identification, collectively.

1 **2000 (120) ELT 800**

5. In view of these orders passed, we do not think that the appeals of the Revenue, which even otherwise have a negligible revenue impact, should be entertained. They are accordingly dismissed.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**