IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CENTRAL EXCISE APPEAL NO. 6 OF 2016

The Commissioner of Central Excise, Commissionerate, Nagpur-II

-vs-

M/s.Larsen & Toubro Ltd., Nagpur

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. Sharad Bhattad, counsel for the appellant.

CORAM : SMT. VASANTI A NAIK & KUM. INDIRA JAIN, JJ.

DATE : 14.10.2016.

By this central excise appeal, the appellant-department challenges the order of the Customs, Excise And Service Tax Appellate Tribunal, so far as it holds that the respondent-assessee would be entitled to cum-duty benefit.

It was the case of the appellant-department before the tribunal that the goods were claimed by the respondent-assessee during the relevant period without including the duty element and hence, the assessee was not entitled to cum-duty benefit. Certain judgments were relied on by the appellant-department before the tribunal in support of the submission. The tribunal, however, found on a reading of the provisions of section 4(1) of the Central Excise Act and specially the explanation appended thereto that the assessee was entitled to cum-duty benefit. Since the taxes were paid by the respondent-assessee on the goods as per the explanation to section 4(1), the assessee was entitled to cum-duty benefit. Since the judgments that were relied on by the appellant-department, did not make a reference to the explanation that was added to the provisions of section 4(1) of the Act in the year 2003, the tribunal rightly considered the explanation to hold that the assessee was entitled to cum-duty benefit.

Since the finding recorded by the tribunal on the issue of grant of cum-duty benefit to the respondent-assessee does not give rise to any substantial question of law, we dismiss the central excise appeal with no order as to costs.

JUDGE **JUDGE**

KHUNTE