NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 25 of 2017

Commissioner, Central Excise Customs and Service Tax, Raipur.

---- **Appellant**

Versus

M/s Shivalaya Ispat & Power Pvt. Ltd., Vill- Kara, Guma, Urla Road, Raipur

---- **Respondent**

For Appellant : Shri Vinay Pandey, Advocate
For Respondent : Shri Neelabh Dubey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

16/08/2017

1. This appeal is by the Revenue against a common order passed by Customs, Excise, Service Tax Appellate Tribunal (for short, '*CESTAT*') on appeal filed against the penalty order against a Company and its Directors.

2. Having heard learned counsel for the Revenue and learned counsel for the respondent-Company, on the previous occasion we thought it appropriate to seek the reason as to why no appeal was instituted by the Revenue as against the decision of the CESTAT in so far as it allows the appeal of the Directors. Today, it is pointed out that the monetary limit of the case of the

Directors was on the lower side on the scales of what the department had fixed to carry up such matters to the Courts of higher jurisdiction. But the fact of the matter is that the substance of the claim and the demand and imposition of penalty were made on the Company and its Directors on a common ground, which is fundamentally referable to mixed questions of facts and law discernible from paragraph 5 and 5.1 of the impugned order of CESTAT. The question whether the demands based on triplicate copies of invoices were sustainable or not; and whether, the Revenue had disclosed the source of the invoices relied on by it were matters in dispute. When such issues have been answered in a wholesome manner by the Tribunal thereby allowing the appeals by the Company as well as those by the Directors, the findings rendered by the Tribunal would bind the Revenue insofar as they are against the Company as well as the Directors. The finality attained to the appeals filed by the Directors, would, therefore, now stare at the Revenue, when this appeal against the Company is now taken up. This matter falls in the realm of *resjudicata* in appeals.

3. The aforesaid position notwithstanding, having heard the learned counsel for the parties, we are also of the view that the questions sought to be raised are primarily questions of facts and do not generate any substantial question of law for interference in favour of the Revenue through an appeal under Section 35 G of the Central Excise Act.

4. For the aforesaid reasons, this appeal fails.

5. In the result the appeal is dismissed.

Sd/- Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

(Sharad Kumar Gupta)
Judge

Kamde