

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Tax Case No. 55 of 2017**

Commissioner, Central Excise & Customs, Raipur

---- Appellant**Versus**

M/s. Govind Electricals, Opp. Mahavir Dharmshala, Dhamtari, Chhattisgarh.

---- Respondents

For Appellant : Shri Vinay Pandey, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, Judge.**Order on Board****Per Thottathil B. Radhakrishnan, Chief Justice****19/06/2017**

1. We have heard learned counsel for the Revenue quiet elaborately on this appeal under Section 35-G of the Central Excise Act, 1944.
2. The attempt of the Department is to put the allegation against the Respondent within the format of sub-section (4) of Section 73 of the Finance Act, 1994. The Respondent took the plea before the authority below, including the CESTAT that the situation is one which would fall under sub-section (3) of Section 73 of the Finance Act, 1994 inasmuch as the service tax amount in question alongwith interest was deposited by the Respondent upon detection of the mistake by the Central Excise Department and before the issuance of the show cause notice, all facts and factors were available for consideration of the CESTAT. It was held that the situation in hand is not one of fraud, collusion, misstatement or suppression of facts with the intention to defraud the Government. The conclusions arrived at by the Department and the CESTAT in the adjudicating

hierarchy is one that is available on the materials available on record. That conclusion having been specific to the effect that the allegations would fall under sub-section (3) of Section 73 of the Finance Act, the CESTAT was justified in holding that the benefit of that provision would go to the Respondent herein. Under such circumstances, we are not able to see that any substantial question of law arises for decision on the facts of the case at the instance of the Revenue.

3. The appeal therefore fails and is accordingly dismissed in *limine*.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE