IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

951 FIRST APPEAL NO. 810 OF 2004

COMMISSIONER OF CENTRAL EXCISE AURANGABAD
VERSUS
M/S TERNA S S K LTD

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Advocate for Appellant : Ladda Dwarkadas S
Advocate for Respondent No.1 V.D. Salunke

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CORAM : **R.D. DHANUKA &**
SUNIL K. KOTWAL,JJ.
DATED : 28-09-2017.

PER COURT :-

This First Appeal was admitted on the following substantial question of law.

" Whether the order dated 09.10.2003 passed by the CESTAT, is not legal and proper as per the provisions of Central Excise and Customs Act and Rules, 1944, when the molasses is bye product arising in the course of manufacturer of sugar and it is used for other dutiable as well as non dutiable goods. The credit earned on Molasses (either cleared by their own unit on payment of duty or procured from market) cannot be used for payment of duty payable on sugar as molasses is a bye product of sugar and is not an input required for manufacturer of sugar as such credit earned on molasses cannot be utilized towards payment of duty on sugar ?"

2. Learned counsel for the parties invited our attention to the Judgment delivered by the Madras High Court in the case of *Commissioner of Central Excise, Madurai Vs. Rajshree Sugards and Chemicals Ltd.* [**in Civil Misc. Appeal No. 2533 of 2005 and CM.P No. 13308 of 2005]** and particularly on paragraphs Nos 10 to 13 and would submit that issue involved in this First Appeal is covered by the aforesaid Judgment of Madras High Court and same would apply to the facts of this case. Statement is accepted.

3. The substantial question of law framed on 18th February, 2015 is accordingly answered in the negative, in favour of the assessee and against the revenue.

4. The First Appeal is disposed of in aforesaid terms. No order as to costs.

(SUNIL K. KOTWAL) **(R.D. DHANUKA)**

JUDGE **JUDGE**

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