

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

FIRST APPEAL NO. 746 OF 2006

Commissioner of Central Excise & Customs
Town Centre, N-5, CIDCO, Aurangabad ... **Appellant.**

Versus

M/s Aurangabad Electricals Ltd.
A-23, M.I.D.C. Waluj, Aurangabad
and others ... **Respondent.**

Mr. D.S. Ladda, Advocate for the appellant.

Mrs. Charuta S. Deshmukh, Advocate respondent Nos.2 and 3.

**CORAM : R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Dated : 24.08.2017.

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ORAL ORDER :-

1. By this First Appeal filed under Section 35G of the Central Excise Act, 1944 the appellant has impugned the order dated 20.12.2005 passed by CESTAT, Mumbai thereby reducing the penalty

to Rs. 10,00,000/- (Rupees Ten Lakh).

2. By an order dated 28.08.2006 while admitting this appeal, the following substantial questions of law were formulated.

1. Whether the order passed by the learned CESTAT, Mumbai to the extent of reducing penalty to Rs. 10,00,000/- imposed under Section 11-AC is proper and legal?

2. Whether the learned CESTAT, Mumbai is right in reducing the penalty imposed despite the fact that it was established that the respondent had suppressed the fact with an intent to evade the duty?

3. Whether the order passed by the learned CESTAT, Mumbai dated 20.12.2005 is bad in law and hence, needs to be quashed and set aside?

3. Mr. D.S. Ladda, learned Counsel for the appellant invited our attention to the judgment of Supreme Court in the case of **Aurangabad Electricals (P) Ltd. Versus The Commissioner of Central Excise and Customs, Aurangabad**, reported in [(2011) AIR (SCW) 1435], which petition was filed by the Assessee herein before the Supreme Court. He submits that in view of the said judgment, this First Appeal filed by the Revenue has become infructuous.

4. First Appeal No. 746 of 2006 is accordingly disposed of as infructuous. No order as to costs.

5. In view of disposal of First Appeal, the pending Civil Application, if any, stands disposed of.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

vdd/-