

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

**CENTRAL EXCISE APPEAL NO. 06 OF 2016
WITH
CIVIL APPLICATION NO. 7737 OF 2017**

Commissioner of Customs, Central Excise,
& Service Tax, Nashik - II Commissionerate,
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Old Agra Road,
Nashik - 422 002. .. Appellant

Versus

M/s Suvarna Sanjivani Sugarcane
Transport, Kopergaon,
Dist. Ahmednagar. .. Respondent

Mrs. Kalpalata Bharaswadkar, Advocate for the Appellant.
Shri P. A. Pisal, Advocate for the Respondent.

**CORAM : ANOOP V. MOHTA AND
SUNIL K. KOTWAL, JJ.**

DATE : 15TH JUNE, 2017.

ORAL JUDGMENT (Per Anoop V. Mohta, J.) :-

. Heard the appeal and application finally by consent of learned counsel for parties.

2. The appellant, Commissioner of Customs, Central Excise and Service Tax, Nashik Commissionerate has filed this appeal under Sec. 35-G of the Central Excise Act, 1944 r/w CENVAT

Credit Rules.

3. Pending the appeal for admission in view of specific provisions and circulars based upon policy decision to reduce the litigations from the side of department, applicant/appellant has taken out a civil application for disposal of appeal as withdrawn at admission stage.

4. The substantial question of law so raised is as under :

Whether M/s Suvarna Sanjivani Sugarcane Transport are entitled for the exemption from service tax under Notification No. 13/2003-DST dated 20.06.2003 for providing taxable service of sugarcane harvesting and transporting thereof to the commercial concern like sugar manufacturers?

5. Appellant/applicant has taken out this application for disposal of central excise appeal, in view of following averments so made in application.

2. That with the objective of reduction of litigation, the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India, has issued Instructions from time to time, setting the Monetary limits below

which the Appeals can not be preferred by the Department. Recently CBEC revised its earlier Instructions dated 17.12.2015 vide F. No. 390/Misc./163/2010-JC/Pt dated 30.12.2016 raising the monetary limit from Rs. 15,00,000/- to Rs. 20,00,000/- with a view to reduce the litigations. As per the Instructions dated 30.12.2016, the monetary limit for preferring Appeal before Hon'ble High Court is above Rs. 20,00,000/-

3. That the above stated monetary limits is also applicable to all pending appeals as clarified vide Instruction No. 390/Misc./163/2010-JC dated 01.01.2016.

6. The other side has no objection. The issue is also settled, in other departmental matters/appeals, with regard to above.

7. The concerned department considering the basic policy to reduce the litigation from respective department side issued various circulars, directions referring to filing of appeals in respective of Appellate Tribunal, High Court or Supreme Court on the basis of monetary limit so prescribed for respective appeals. It is directed and ordered that such appeal shall not be filed in case where the tax effect does not exceed the monetary limits so given. We are concerned with the appeals by the

respective departments before the High Court, monetary limit of which is fixed now to Rs. 20,00,000/-. The Division Bench of this Court at Panji (Goa) of which one of us (Anoop V. Mohata, J.) was party, in a case of **The Commissioner of Income Tax, Panjim Vs. Velingkar Brothers** **MANU/MH/0441/2017** has dealt with such appeals referring to Supreme Court as well as High Court judgments and has observed as under :

We are inclined to dispose of this review petition & the appeal on this sole ground. This is also to avoid multiplicity and/or keeping the litigation pending. The instructions so reflected in the Circular No. 21/2015 of CBDT is in the interest of both, the Department, so also the assessee. We are just accepting the position basically on the facts and the record.

8. The Division Bench of this Court at Panji (Goa) of which one of us (Anoop V. Mohta, J.) was party in another judgment in a case of **Pr. Commissioner of Income Tax Vs. Bandekar Brothers Pvt. Ltd. 2017(3) Bom.C.R. 367** referring to Sec. 260-A of the Income Tax Act, on similar situation revolving around filing of such appeals in High Court has recorded as under :

10. Even this contention in the fact and circumstances and in view of tax effect limit is more than Rs.20,00,000/- need no further discussion as sought to be contended by learned counsel appearing for the assessee

based upon the Circulars so referred above. If case is made out, we have to consider clause (2) of the Circular (5/2017) dated 23.1.2017, even if monetary limits is more or less as prescribed in the circular. The Apex Court has expressed in [2013] 350 ITR 300 9 (SC) Commissioner of Income-Tax Vs. Surya Herbal Ltd. as under:-

"Delay condoned.

Liberty is given to the Department to move the High Court pointing out that the Circular dated February 9, 2011, should not be applied ipso facto, particulaly, when the matter has a cascading effect. There are cases under the Income-tax Act, 1961, in which a common principle may be involved in subsequent group of matters or a large number of matters. In our view, in such cases if attention of the High Court is drawn, the High Court will not apply the Circular ipso facto. For that purpose, liberty is granted to the Department to move the High Court in two weeks."

21. It is also settled that timely Circulars issued by the CBDT under the provisions of the Income Tax Act, required to be kept in mind while entertaing/admitting and/or deciding the appeal. The reasons, therefore, so given referring to those Circulars have been kept in mind while passing this order as on merits also we have noted that there is no substantial question of law involved or arose. Therefore, there is no occasion to frame or reframe any additional question of law for the reason above recorded. We are dismissing the appeal at the admission stage itself.

9. The Division Bench of this Court at Panji (Goa) of which one of us (Anoop V. Mohta, J.) was a party, while dealing with Sec. 131-BA of the Customs Act, 1962 read with Sec. 35(R) of the

Central Excise Act, 1944 and the aspect of reduction of litigation referring to monetary limits from time to time for filing appeals by the department in a case of Commissioner of Customs and Central Excise Vs. Sesa Goa Ltd. 2017(3) Bom.C.R. 470

has reiterated as under :

4. Apart from the above position of law the Ministry of Finance issued certain resolutions of excise and customs from time to time and has issued instructions / circulars with clear intention to support the Government cases for reduction of litigation referring to the monitory limits from time to time, for filing appeals by the department before CESTAT / High Court and Supreme Court referring to power conferred by Section 35(R) of the Central Excise Act, 1944 and section 131 BA of the Customs Act, 1962 and related provisions of The Finance Act, 1994 .

6. There is no issue that the appeals filed by the department in the year 2012 having monitory limits of below 15 / 20 lakhs. The above provisions and instructions/ circulars therefore covers the case of disposal of these appeals on the same ground. The learned Counsel appearing for the respondents has no objection for such disposal. We are, therefore, inclined to do so.

7. However, it is made clear that in view of the specific provision of Section 131BA(2) as reproduced and emphasized above it is necessary to observe that once the appeals are disposed off in view of the above circumstances, based upon such circulars / instructions "it shall not preclude such Commissioner of customs from filing any appeal, application, revision or reference in any other case involving the same or similar issues or questions of law."

10. Therefore, taking over all view of the matter and with above observations, we are disposing of this appeal and application.

11. Appeal along with civil application are accordingly disposed of. No costs.

[SUNIL K. KOTWAL, J.]

[ANOOP V. MOHTA, J.]

bsb/June 17