IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO. 44 OF 2015

Commissioner of Customs Central
Excise and Service Tax .. Appellant

Versus

The Latur District Co-op. Bank Ltd. .. Respondent

Shri D. S. Ladda, Advocate for the Appellant.

CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.
DATE : 27TH JANUARY, 2017.

PER COURT :

. The assessee had filed an appeal before the Commissioner (Appeals) Central Excise and Customs. The Commissioner allowed the appeal filed by the assessee. The department challenged the said order before the Central Excise and Service Tax Appellate Tribunal (for short "CESTAT"). The CESTAT partly allowed the appeal and remanded the matter before the Commissioner (Appeals). Aggrieved thereby the department has filed present appeal.

2. Mr. Ladda, the learned counsel for the appellant submits that, in service tax returns the value of the service tax was made by the assessee. Upon audit it was found the same is muchless

than the actual. The extended period of limitation would be available. This aspect ought to have been considered by the CESTAT, instead of remanding the matter back to the Commissioner (Appeals).

3. We have considered the said judgment. Whether the value shown was on account of fraud, collision or was outcome of willful misstatement or suppression of facts will have to be gone into considering the factual matrix of the case and for the said purpose the CESTAT has partly allowed the appeal of the department and remanded the matter back to the Commissioner to consider these aspects.

4. Considering the aforesaid aspects of the matter, it would not be appropriate for this Court for the first time to consider the ingredients of fraud, willful misstatement, etc. The appellant can put forth its contention before the Commissioner (Appeals).

5. Considering the above, no substantial question of law arises in the present appeal. The appeal as such is dismissed. No costs.

6. The matter is remitted to the Commissioner (Appeals) in the year 2014. In fact, Commissioner (Appeals) ought to have decided the said appeal by now. We hope and trust that the

Commissioner (Appeal) after affording opportunity to all the parties shall decide the said appeal expeditiously, if not decided earlier.

[K. L. WADANE, J.] **[S. V. GANGAPURWALA, J.]**

bsb/Jan. 17