

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3940 OF 2014

Sharda Synthetics Ltd.
Through Director
Shri K.B.Kagzi & Anr.

.. Petitioners

v/s.

Union of India
through Secretary,
Ministry of Finance & Ors.

..Respondents

Mr. Vishal Agarwal a/w. Isha Shah & Prabhakar K. Shetty for the
Petitioner.

Ms.PS.Cardazo for the Respondent No.3.

**CORAM : ANOOP V. MOHTA &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : JULY 19, 2017.**

FINAL ORDER :

1. By consent of the parties, taken up for final hearing.
2. On hearing the Counsel for the parties, we are inclined to remand the matter in view of the following observations.
3. Paragraph 6, of the order passed by the Customs, Excise Service Tax Appellate Appellate Tribunal, dated 31st May, 2012 reads as thus:

“ We find that the demand is confirmed on the ground that the applicants availed credit on the strength of invoice regarding which appropriate duty has not been paid by the supplier of the grey fabric. The applicants produced evidence to show that appropriate duty has been paid by the supplier and produced documents in this regard with the reply to the show cause notice. We find that this evidence produced by the applicants has not been taken into consideration by the adjudicating authority nor by the Commissioner (Appeals), therefore the applicants have made out a strong case for total waiver of duty, interest and penalty. Pre-deposit of the dues is waived for hearing of the appeals”

Considering the fact that the order passed by the Customs, Excise Service Tax Appellate Tribunal, (The Tribunal) was not available when the hearing took place before the Joint Secretary (Revision Application) (The Joint Secretary), and especially paragraph 6 of the said order goes to the root of the matter. Therefore, without expressing anything on merits, we are inclined to interfere with order dated 24th April, 2012 passed by the Joint Secretary, with direction to deal with the issues afresh in accordance

with law, by taking into consideration order dated 31st May, 2012, passed by the Tribunal.

4. The learned Counsel appearing for the parties, conceded to this situation and expressed no objection for this mechanism, in the interest of justice.

5. All points on merits are kept open. The petition is accordingly disposed of with liberty. No costs.

(ANUJA PRABHUDESSAI, J.)

(ANOOP V. MOHTA, J.)