IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO. 23684 OF 2017
WITH
CIVIL APPLICATION NO. 2476 OF 2017

Smt.Nipurna M. Rathod. … Appellant.
V/s.
Commissioner of Excise,
Dadra & Nagar Haveli, Silvassa and other. … Respondents.

Mr.Jaydeep Deo for the appellant.

Mr.Shrishailya S. Deshmukh for respondent Nos.1 and 2.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 21st September 2017.

P.C.:

Not on board. Taken up on board.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first and second respondents.

3. On the prayer made by the learned counsel for the appellant, we permit the appellant to delete third respondent. The amendment shall be carried out within one week from the date on which this order is uploaded.

4. Being aggrieved by the order dated 27th January 2017 passed by the Deputy Commissioner (Excise), Dadra and Nagar Haveli, Silvassa, the present appellant preferred an appeal under clause (2) of Regulation 77 of the Dadra and Nagar Haveli Excise Regulation, 2012 (for short "the said Regulation"). By the impugned order dated 28th July 2017, the said appeal has been dismissed.

5. Considering the narrow controversy involved, this appeal preferred under clause (3) of Regulation 83 of the said Regulation will have to be heard immediately on the following substantial questions of law:

> (i) Whether the appellate authority exercising power under clause (2) of Regulation 77 can decide the appeal without following Regulation 79 of the said Regulation?
>
> (ii) Whether the impugned order passed by the Commissioner of Excise is perverse as it records no reasons?

6. Our attention is invited to Regulation 79 and in particular clause (1) thereof. The mandate of clause (1) is that the order of the Appellate Authority disposing of an appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. The impugned order runs into only one page. It does

not incorporate the points for determination and any reasons whatsoever. Thus, the impugned order is completely contrary to Regulation 79. Moreover, as an appellate authority, this Court does not have the benefit of the reasons recorded by the Commissioner of Excise. Hence, we dispose of the appeal by passing the following order:

<u>O R D E R</u>

(i) The impugned order dated 28th July 2017 passed by the Commissioner of Excise, Dadra and Nagar Haveli, Silvassa is hereby set aside and the appeal dated 20th February 2017 (Exh.B to the present appeal) is restored to the file of the Commissioner of Excise, Dadra and Nagar Haveli. Silvassa;

(ii) We direct the appellant to appear before the Commissioner of Excise on 6th October 2017 at 11.00 a.m.;

(iii) The application for interim relief/ prayer for stay in the appeal preferred by the appellant shall be taken up for hearing by the Commissioner of Excise and shall be disposed of in accordance with law within a period of one month from 6th October 2017.

(iv) Till the stay application is heard and the order passed thereon is communicated to the appellant, the ad-interim order passed by this Court dated 21st August 2017 shall continue to operate. If the order passed on the stay application be adverse to the appellant, the said interim order shall continue to operate for a further period of three weeks from the date on which the order is communicated to the appellant;

(v) We make it clear that we have made no adjudication on the merits of the appeal which is restored; All contentions on merits are kept open;

(vi) The appeal is partly allowed on the above terms with no order as to costs.

(vii) The Commissioner of Excise (Appellate Authority) shall act upon an authenticated copy of this order.

(viii) Civil Application No.2476/2017 does not survive and the same is disposed of accordingly.

(RIYAZ I. CHAGLA, J.) (A.S.OKA, J.)