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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 154 OF 2016

Windals Auto Pvt. Ltd. …Appellant
Versus
The Commissioner of Central Excise …Respondent

Mr. Prakash Shah, with Mr. Jas Sanghvi i/b PDS Legal for Appellant.
Ms. P.S. Cardoza, for Respondent.

CORAM: A.S. OKA AND RIYAZ I. CHAGLA, JJ.
DATED: 20th September 2017

PC:-

1. The question is whether the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai ("**Appellate Tribunal**") was right in deciding the Appeal preferred by the Appellant on merits in absence of the Appellant or its Advocate especially in the light of the facts pleaded in the Memorandum of Appeal.

2. By the impugned judgment and order, the Appellate

Tribunal dismissed Appeal preferred by the Appellant. An Appeal arising out of the same proceedings filed by the Revenue, wherein challenge was to non-imposition of penalty on Mr. Udaykumar Vinzanekar was also decided by the same impugned order.

3. Based on intelligence gathered, the officers of the Director General of Anti-Evasion, Zonal Unit visited the factory premises of the Appellant Company for investigation. After recording the statements of an employee and a Director of the Appellant, a show cause notice was issued on 3rd November 2000 making a demand in the sum of Rs.39,63,167/- with interest and penalty. A show cause notice was also issued to one Mr. Udaykumar Vinzanekar, a Director of the Appellant Company. By order dated 25th January 2002, the demand against the Appellant company was confirmed and penalty of Rs.4,81,658/- was also imposed. However, penalty under Rule 209 A of the Central Excise Act, 1944 was not imposed on the said Mr. Udaykumar Vinzanekar. An Appeal preferred by the Appellant Company against the order dated 25th January 2002 was

allowed by the Appellate Tribunal by passing an order of remand. After remand, a *de-novo* adjudication was made by the Commissioner by passing the order dated 21st April 2006. The Commissioner imposed penalty of Rs.33,41,118/- and held that the Appellant is liable for payment of interest as directed under the said order. Being aggrieved by the said order, the present Appellant preferred an Appeal before the Appellate Tribunal. As stated earlier there was a separate Appeal preferred by the Respondent – Revenue the challenging order of non-imposition of penalty on the Director of the Appellant Company.

4. The learned counsel appearing for the Appellant submitted that the Advocate who was representing the Appellant before the Appellate Tribunal had expired. The Appellant parted with possession of their office in Mumbai with effect from 1st March 2005 and during the pendency of the Appeal before the Appellate Tribunal, the manufacturing activities in the factory at Mumbai were also discontinued. He pointed out the averments made in the paragraph 28 of Memorandum of Appeal and stated that the Appellant

company did not receive notice or intimation of the date fixed for hearing of the Appeal before the Appellate Tribunal.

5. The prayer of the learned counsel appearing for the Appellant is that by setting aside impugned judgment and order, the Appeal preferred by the Appellant be ordered to be heard on merits. He submitted that though the Appellate Tribunal has purported to decide Appeal on merits, there are no findings recorded at all by the Appellate Tribunal after considering grounds of Appeal. The learned counsel appearing for the revenue supported the impugned order of the Appellate Tribunal.

6. We have considered the submissions. It is true that the Appellate Tribunal could have decided the Appeal in absence of the Appellant. However, the Appellate Tribunal was required to record reasons by applying its mind to the grounds of challenge in the Memorandum of Appeal. On plain reading of the impugned judgment, the Appellate Tribunal has not adverted itself to the grounds of challenge incorporated in the Memorandum of Appeal filed before it and

in any case, there are no elaborate findings recorded in the impugned judgment. The Appellate Tribunal had noted that the Appeal was listed before it on 10th February 2014, 25th March 2014 and 29th April 2014, when none appeared for the Appellant. The Memorandum of Appeal discloses that the Advocate appointed by the Appellant died during the pendency of the Appeal and thereafter, intimation of the dates fixed was not received by the Appellant.

7. In any case, the Appellate Tribunal has not done its duty by adverting to the grounds in the Memorandum of Appeal and by recording the reasons for dismissing the Appeal.

8. As two Appeals were decided by a common judgment and order, by setting aside the impugned judgment and order, both Appeals are required to be restored to the file of the Appellate Tribunal.

9. Accordingly, we dispose of the Appeal by passing following order:-

(a) The impugned judgment and order dated 29th April 2014 is hereby quashed and set aside and Appeals Nos. E/2294/06 and E/378/07 – Mum are restored to the file of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai, Court No. II;

(b) We direct the Appellant and the Respondent to appear before the Appellate Tribunal on 6th November 2017 at 11.00 a.m. for fixing the schedule of hearing;

(c) We are sure that considering the fact that the Appeals are of year 2006 and 2007, the necessary priority will be given by the Appellate Tribunal for the disposal of the said Appeals;

(d) All contentions in the Appeals are kept open;

(e) The Appeals are partly allowed on the above terms;

(f) Pending Notice of Motion, if any, does not survive.

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