Sharayu.

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

CENTRAL EXCISE APPEAL NO. 57 OF 2016

Kadamba Transport Corporation Limited ...Appellant

Versus

The Commissioner of Central Excise, Goa ...Respondent

Mr. Bharat Raichandani, i/b Mr. Rajan Mishra, for the Appellant.

Mr. Pradeep Jetley, for the Respondent.

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

DATE : 28 August 2017

ORDER :

1. Heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondent. Following question of law arises for consideration of this Court:

> "Whether after passing an order of remand to the Adjudicating Authority for deciding afresh the refund claim of the Appellant, CESTAT could have concluded the issue of entitlement of interest on the refund claim?"

2. We have forthwith taken up the Appeal for final disposal considering the very narrow controversy involved in the Appeal.

3. Refund claim submitted by the present Appellant was rejected. Being aggrieved by the order of rejection of the refund claim passed by the Adjudicating Authority, the Appellant preferred an Appeal before the Commissioner (Appeals). By the order-in-Appeal dated 30 July 2013, the learned Commissioner (Appeals) by setting aside the order of the Adjudicating Authority, remanded the claim for refund for fresh consideration. The Commissioner directed the Appellant to make available ticket books for verification of the Department. In the said order, the Commissioner observed that the Lower Authority was required to keep in mind the fact that the

Appellant is a Government of Goa Undertaking and if additional documentary evidence was needed, the same ought to have been requisitioned instead of summarily rejecting the refund claim.

4. Revenue preferred an Appeal before the Customs, Excise and Service Tax Appellate Tribunal (for short "***CESTAT***") against the said judgment and order. In the impugned judgment and order in paragraph 6, the CESTAT accepted the contention of the Revenue that at the relevant time, the Commissioner (Appeals) had no power to pass an order of remand. Secondly, it was found that the refund claim was rejected by the Adjudicating Authority on the ground that the Appellant had not produced relevant records. Therefore, by setting aside the impugned order of the Commissioner (Appeals), the matter was remanded to the Adjudicating Authority for a fresh decision on refund claim made by the Appellant. In paragraph 7 of the impugned judgment, CESTAT observed that the Appellant was not entitled to any interest on the amount of refund in the event

the refund claim was allowed. The CESTAT observed that the claim for refund was rejected, as relevant records were not produced by the Appellant.

5. The learned Counsel appearing for the Appellant submitted that the issue whether the Appellant was entitled to interest or the claim of refund was required to be decided by the Adjudicating Authority and therefore, while passing the order of remand, the CESTAT could not have concluded the issue of entitlement of the Appellant to interest on the refund claim if any. The learned Counsel appearing for the Respondent submitted that the observations made in paragraph 7 of the impugned judgment are in the context of factual position and therefore, no interference is called for.

6. We have considered the submissions. The order of the Commissioner (Appeals) has been set aside by the CESTAT on the ground that at the relevant time, he had no powers to pass an order of remand. The observation made by the

Commissioner (Appeals) is that as the Appellant is a Goa Government Undertaking, additional documentary evidence ought to have been requisitioned by the Adjudicating Authority instead of summarily rejecting the claim for refund.

7. Once it is an admitted position that it is only the Adjudicating Authority which has jurisdiction to decide whether interest on refund claim should be granted, there was no reason for the CESTAT to have decided the issue of entitlement of the Appellant to claim interest on the refund claim. In fact, the adjudication on the question, whether the Appellant is entitled to refund is not yet made. In the event, the Adjudicating Authority is inclined to grant refund, the fact that at the relevant time necessary documents were not produced by the Appellant, is only a factor to be considered for consideration of the question of grant of interest. However, this factor may not be conclusive.

8. Therefore, in our view, the part of the impugned order by which final adjudication was made by the CESTAT on

the issue of entitlement of the Appellant to interest on the refund claim was completely erroneous and therefore, deserves to be set aside. Accordingly, we pass the following order:-

(i) The finding recorded in paragraph 7 of the impugned order dated 12 September 2014 passed by the CESTAT is hereby set aside;

(ii) Subject to observations made in the Judgment, we make it clear that the issue whether the Appellant is entitled to interest on the refund claim is kept open to be decided by the Adjudicating Authority, if it finds that the Appellant is entitled to refund;

(iii) All contentions on this behalf are kept open;

(iv) Appeal is partly allowed in above terms.

[RIYAZ I. CHAGLA J.] **[ABHAY S. OKA, J.]**