Sharayu.

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

CENTRAL EXCISE APPEAL NO. 189 OF 2006

**The Commissioner of Central Excise,
Thane II, ...Appellant**

Versus

M/s. Tube Investments of India Ltd. ...Respondent

Ms. P.S. Cardozo, i/b Mr. Joel J. Carlos, for the Appellant.

Mr. V. Sridharan, Senior Advocate, a/w Mr. Prakash Shah & Mr. Jas Sanghavi, i/b PDS Legal, for the Respondent.

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

DATE : 16 August 2017

ORDER :

1. Heard the learned Counsel for the Appellant and the learned Senior Counsel for the Respondent.

2. The Appellant has taken an exception to the judgment and order dated 4 May 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "***Appellate Tribunal***').

3. With a view to appreciate the submissions canvassed across the bar, it will be necessary to make a reference to the facts of the case in brief.

4. The refund claim in the sum of Rs. 1,84,270/- was filed on 5 May 1995 on the basis of endorsement on the invoices cum delivery challans. On the basis of the said claim, a show cause notice dated 24 July 1995 was issued by the Assistant Commissioner of Central Excise. A copy of show cause notice is annexed at *Exh.A* to the Appeal. On 18 August 1995, an Order-in-Original was made by the Assistant Commissioner, by which the claim for refund made by the predecessor of the Respondent was rejected by the Assistant Commissioner. Being

aggrieved by the said order, an Appeal was preferred by the Respondent before the Commissioner. The said Appeal was dismissed by the Commissioner of Central Excise (Appeals) by his judgment and order dated 2 June 1998. Being aggrieved by the said orders, the Respondent preferred an Appeal before the Appellate Tribunal. The prayer made in the said Appeal read thus :-

> *"(a) set aside the orders passed by the Commissioner of Central Excise (Appeals) and sanction the refund of Rs. 184270/- to the appellant."*

5. By judgment and order dated 12 April 2003, the Appeal was allowed by the Appellate Tribunal. The relevant part of the judgment reads thus :-

> *"In the present case it is not disputed that credit was taken on or before 30.06.1994. Applying the ratio of the above decision I hold that Modvat credit*

under Rule 57A of the Central Excise Rules 1944 admissible to the appellants, set aside the impugned order and allow appeal."

6. It appears that the second refund claim for the same amount was filed by the Respondent on the basis of the order of the Appellate Tribunal dated 12 April 2003. On the said Application for refund, an order was passed by the Assistant Commissioner, which reads thus :-

"I hereby allow Cenvat credit of Rs. 1,84,270/- (Rupees one Lac eighty four thousand Two hundred seventy only) to M/s. Tube Investments of India Ltd. Unit M/s. Press Metal Corporation. They shall be allowed to utilize the same in accordance with the Cenvat credit Rules, 2002."

7. Being aggrieved by the said order, an Appeal was

preferred by the Respondent before the Commissioner Central Excise (Appeals), which came to be rejected. This is how the matter was carried by way of an Appeal by the Respondent to the Appellate Tribunal. By the impugned order, the Appellate Tribunal directed the Department to refund the amount of Rs. 1,84,270/- to the Assessee in terms of the order dated 12 April 2003.

8. The learned Counsel appearing for the Appellant has taken us through the impugned order and other relevant orders. She submitted that the following question is a substantial question of law, which arises in this Appeal:-

> *"Whether, in the facts and in the circumstances of the case, the Tribunal was right in Law in allowing the refund of modvat credit, when there was no such provision for granting of refund by way of cash/cheque in the central Excise Rules, 1944?"*

9. Her submission is that in the earlier round, the Appellate Tribunal has not directed the refund of the amount as claimed by the Respondent. Her submission is that the order of the Appellate Tribunal was that modvat credit under Rule 57A of the Central Excise Rules 1944 was admissible to the Respondent. Her submission is that in any case, there is no provision in law to refund the amount to the Respondent.

10. The learned Senior Counsel appearing for the Respondent pointed out that what was granted under order dated 12 April 2003, was an order of refund by the Appellate Tribunal and it is only for enforcing the said order that the second refund claim was made on 31 July 2003 by the Respondent. He placed reliance on the decision of learned Single Judge of this Court in ***Deccan Sales Corporation & Anr. Vs. R. Parthasarthy & Ors***.[1] and submitted that no interference is called for.

11. We have carefully considered the submissions.

1 ***1982(10) E.L.T. 885 (Bombay)***

We have perused the show cause notice dated 24 July 1995 issued by the Assistant Commissioner of Central Excise, which clearly shows that there was a claim made for refund of Rs. 1,85,272/-. The Order-in-Original dated 18 August 1995 passed by the Assistant Commissioner specifically rejects the claim for refund. This order was carried in Appeal before the Commissioner Appeals and thereafter to the Appellate Tribunal. As noted earlier, in the Appeal preferred by the Respondent before the Appellate Tribunal, there was a specific prayer to set aside the order passed by the Assistant Commissioner of Central Excise (Appeals) and sanction the refund of Rs. 1,84,270/- to the Respondent. We have already quoted the operative part of judgment and order dated 12 April 2003, by which by setting aside the impugned order of the Commissioner (Appeals), the Appeal preferred by the Respondent before the Appellate Tribunal was allowed. Thus, the claim for refund was allowed.

12. We may note here that the judgment and order passed by the Commissioner Appeals, which was

impugned before the Appellate Tribunal specifically holds that the Respondent was not entitled to refund. As a result of the order of the Appellate Authority allowing the Appeal under the judgment and order dated 12 April 2003, the claim for refund made by the Respondent was allowed as prayed in terms of prayer clause (a) in the Appeal. The said judgment and order dated 12 April 2003 has become final. Even in the Order-in-Original dated 30 October 2003 passed on the basis of second refund application praying for the same refund which was claimed earlier, the Assistant Commissioner has referred to the judgment and order dated 12 April 2003. By the impugned judgment and order, the Appellate Tribunal has held that by the judgment and order dated 12 April 2003 passed by the Appellate Tribunal, the claim for refund made by the Respondent was allowed.

13. As we have observed earlier, the judgment and order dated 12 April 2003 passed by the Appellate Tribunal has attained finality and the Appellant was bound by the said order

directing refund to the Respondent in the sum of Rs. 1,84,270/-.

14. All that the Appellate Tribunal has done by the impugned judgment and order is to direct the implementation of its earlier judgment and order dated 12 April 2003, which has attained the finality.

15. Therefore, in our view, no question of law much less a substantial question of law arises in this Appeal, in the light of the judgment and order dated 12 April 2003 passed by the Appellate Tribunal.

16. Accordingly, we find no merit in the Appeal and the same is dismissed, with no order as to costs.

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