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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.5 OF 2016

The Commissioner of Service Tax – VI … Appellant
Vs.
M/s. Morgan Stanley Solutions (I) Pvt. Ltd. … Respondent

Ms. P.S. Cardozo i/by Shalakha Gujar, for the Appellant

Mr. Anupam Dighe a/w Mr. Vishal Jathar i/by India Law Alliance for the Respondent.

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

DATE : 4th SEPTEMBER, 2017

P.C.

1 Heard the learned counsel appearing for the appellant. The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench partly allowed the Appeal preferred by the respondent and passed an order of remand to the Adjudicating Authority. Paragraph 5.1 and 5.2 of the impugned judgment and order read thus :-

> "5.1 In my above observation and discussion, I am of the view that the Appellant is prima facie entitled for the refund, however, the Appellant submitted the declaration from the service recipient clarifying the discrepancy of location in the FIRCs first time before this Tribunal for which Misc. Applications were filed for

taking the same on record. The said Misc. Applications are allowed.

5.2 I therefore remand these matters to the original adjudicating authority to consider a fresh the refund claim of the Appellants taking into the stock of my above observations. The Adjudicating Authority shall dispose of the matters within a period of two months from the receipt of this order. Needless to say that the Adjudicating Authority shall grant to the Appellant the opportunity of personal hearing as well as to submit any additional documents for processing of refund. The Appeals are disposed of by way of remand."

2 The submission of the learned counsel appearing for the appellant is that the impugned order cannot be said to be a simplicitor order of remand as virtually there is a finding recorded by the Appellate Tribunal that the respondent is entitled to refund as prayed. Her second submission is that the Tribunal erred in allowing the respondent to rely upon certain documents which were not before the Adjudicating Authority when the claim for refund was considered earlier.

3 We have considered the submissions. We have quoted paragraph 5.1. It is crystal clear that the observation made in paragraph 5.1 is only prima facie observation made by the Customs, Excise and Service Tax Appellate Tribunal. The issue whether the respondent is

entitled to refund in accordance with law is not at all concluded by the prima facie observation and issue of entitlement of the respondent to the refund has been expressly kept open to be decided by the Adjudicating Authority. Moreover, the documents which were placed before the Tribunal will be considered in accordance with law. Therefore, we do not agree that the issue of entitlement of the respondent to claim refund does not remain open. As observed earlier, the said issue remains open which will be decided in accordance with law. Hence, no substantial question of law arises. In fact, no question of law arises in this Appeal. Subject to above clarification, the Appeal is dismissed.

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