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

CENTRAL EXCISE APPEAL No. 135 OF 2015

The Commissioner of Central Excise
& Service Tax, Kolhapur ..Appellant

v/s.

Bahar Agro Chem & Feeds Pvt. Ltd. ..Respondents

Mr.Pradeep Jetly a/w. Mr. Jitendra Mishra for the Appellant.
Mr.Yogesh Patki a/w. Mr. A.S.Ramesan i/b.A.S.Ramesan Advocates for the Respondent/State.

CORAM : ANOOP V. MOHTA &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : JULY 11, 2017.

ORAL JUDGMENT (<u>PER ANOOP V. MOHTA, J.</u>) :

1. Rule.

2. This appeal is under Section 35 of the Central Excise Act, (CF Act) 1944. By consent, heard finally at the stage of admission.

3. A preliminary objection is raised to the maintainability of this appeal under Section 35G (CF Act) against the impugned Order as ut deals with the aspect of "Rate of Duty" and "Value of Goods". The

respondents have already preferred Special Leave Petition in the Supreme Court against the same order/issues and the same is admitted. The "Rate of Duty" and "Value of Goods", the basic issues, are pending in the Supreme Court.

4. The plain reading of Section 35(G) makes the position very clear. Section 35(G) reads thus:

Appeal to High Court. -

> (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.
>
> ….
>
> (6) The High Court may determine any issue which -
>
> (a) has not been determined by the Appellate Tribunal; or
>
> (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-Section (1).

5. It is clear from the provisions itself that no appeal lies to the High Court from the Order passed by the Appellate Tribunal being the order relating among other things, to the determination of any

question having a relation to the rate of duty of excise and/or to the value of goods for the purposes of amendment.

6. The submission that there are other issues also involved, including an extension of limitation period, in view of the clear provisions referred above and as the Special Leave Petition against the order/issue is pending in the Supreme Court, we are inclined to accept the preliminary objection raised by the respondents about maintainability of this appeal in the High Court.

7. Therefore, by keeping all points open, the present appeal is disposed of as not maintainable, with liberty to the appellants to approach the available appellate forum against the impugned order/issue, if so instructed.

8. The appeal is accordingly disposed of with no order as to costs.

(ANUJA PRABHUDESSAI, J.) **(ANOOP V. MOHTA, J.)**