IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Civil Application (CAT) No.13 of 2017
(The Pr. Commissioner of Customs, Service Tax & Central Excise, Nagpur .vs. M/s. Morarji Textiles Ltd., Nagpur)
in
Central Excise Appeal No.10 of 2017
(The Pr. Commissioner of Customs, Service Tax & Central Excise, Nagpur .vs. M/s. Morarji Textiles Ltd., Nagpur)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.

Mr.S.N.Bhattad & K.K. Nalamwar, Advocate for Appellant.

CORAM : M.S.SANKLECHA & MANISH PITALE, JJ.

DATE : 01.07.2017.

This is an application seeking a stay of the order dated 19.09.2016 passed by the Customs Excise and Service Tax Appellate Tribunal. The order dated 19.092016 has been challenged in Appeal No.10/2017 filed in this Court.

2. We have today by a separate order admitted the Revenue's Appeal No.10/2017 as giving rise to the following question of law:-

"Whether the learned CESTAT was correct holding that the respondent was eligible to utilize the Cenvat Credit for payment of service tax on commission paid to overseas agents under the category of 'Business Auxiliary Service' or whether the said Service Tax was required to paid only by cash?"

3. The issue which arises in the appeal as reflected in the above question is utilisation of Cenvat Credit for payment of the service tax in respect of services received from foreign service providers on reverse charge.

4. The impugned order allowed the respondent/appellant's appeal by following its own order **No.A/44/15/SMB** dated 02.01.2015 in respect of the same issue of respondent-assessee. The Revenue has filed an appeal against the order dated 02.01.2015 to this Court bearing Central Excise Appeal No.16/2017. In that appeal no application for stay of the order dated 02.01.2015 on the same issue had even been made by the appellant-Revenue. Further, the

issue which arises is a contentious issue and order of the Tribunal dated 02.01.2015 on which the impugned order relies has elaborately dealt with the issue to come to the view that assessee is entitled to discharge service tax payable on reverse charge basis in respect of services received from Foreign parties. The issue is one of interpretation. The view taken is not shown to be perverse or contrary to rulings of high forums, warranting the stay of the impugned order.

5. For the above reasons there is no justification to stay the order dated 19.09.2016 of the Tribunal. Accordingly the stay application is dismissed. No order as to costs.

JUDGE **JUDGE**

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