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

Central Excise Appeal No.31 of 2006

(The Commissioner Central Excise, Nagpur -vs.- M/s. Ferro Alloys Corporation Ltd. and another)

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, Advocate for Appellant.

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

DATE : 17.07.2017.

This appeal under Section 35G of the Central Excise Act, 1944 ("the Act") challenges the order dated 7th November, 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal ("the Tribunal"). By the impugned order the revenue's appeal before the Tribunal was dismissed by following the decision of the Larger Bench in the case of **Vikram Ispat vs. CCE 2000 (120) ELT 80**.

2. This appeal was admitted on 30th September 2009 on the following substantial question of law :

"Whether the Credit duty availed by the Respondent no.1 should have been restricted to additional duty leviable

under section 3 of Customs Tariff Act 1975?"

3. The Revenue had preferred an appeal to this Court from the decision of the Larger Bench of the Tribunal in **Vikram Ispat** (*supra*). This Court by an order dated 26th July, 2006 in **Commissioner of Central Excise, Raigad vs. Vikram Ispat Ltd., 334 ELT 14,** dismissed the Revenue's appeal as not being maintainable. This for the reason that the question relates to the rate of duty applicable and in terms of Section 35(L) of the Act such an appeal is subject matter of appeal to the Apex Court. In fact the appeal of the Revenue from **Vikram Ispat Ltd.** (*supra*) was dismissed by the Apex Court as reported in 334 ELT A 43.

4. In the above view, appeal is dismissed. No order as to costs.

JUDGE **JUDGE**

waghmare