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

Central Excise Appeal No.13 of 2012
(The Commissioner Central Excise, Nagpur .vs. M/s Wardha Power Company 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.
Mr. Gajendra Jain, Advocate for Respondent No.1.

CORAM : M.S. Sanklecha & Manish Pitale, JJ.
DATED : June 23, 2017.

This appeal by the Revenue under Section 35-G(1) of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 (Act) challenges the order dated 17.02.2012 passed by the Customs Excise and Service Tax Appellate Tribunal (Tribunal).

2. The appellant/Revenue urges the following questions of law for our consideration:-

> *"(i) Whether the Tribunal was correct in holding that refund is allowable on the services for which assessee has not applied for approval and which services are not approved by the Approval Committee by ignoring the condition No.1(a) of the Notification No.9/2009-ST dtd. 03.03.2009.*
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> *(ii) Whether the Tribunal was correct in holding that refund is allowable under Notification No.9/2009-ST dtd. 03.03.2009 on the services received prior to 03.03.2009 when the services provided prior to 03.03.2009 were totally exempted from payment of service tax under Notification*

No.04/2004-ST dtd. 31.03.2004 and the refund for such service tax paid for this period is governed under Section 11B of the Central Excise Act, 1944 as applicable to service tax under Section 83 of the Finance Act, 1994.

(iii) Whether the Tribunal was correct in holding without any discussion in the order dtd. 17.02.2012 the services provided in the Head Office at Hyderabad are in relation to authorised operations of SEZ at Warora.

(iv) Whether the Tribunal was correct in holding that "the procedure prescribed by the Board in Circular No.120/01/2010-ST dtd. 19.01.2010 in respect of exports can be reasonably applied to the case under consideration" when the Circular No.114/08/2009-ST dated 20.05.2009 lays down the relevant procedures/conditions for refund under Notification No.9/2009-ST dtd. 3.3.2009."

3. At the very out set, Mr. Jain, learned counsel appearing for the respondent no.1-Assessee states that the questions as formulated clearly point out that the appeal involves itself with questions having relation to availability of exemption under Notification No.9/2009-St dated 03.03.2009. Consequently the interpretation of the exemption notification No.9/2009 gives rise to a question having relation to the rate of duty of excise/service tax payable units operating in the Special Economic Zone (SEZ). In particular, he placed reliance upon the decision of this Court in **Commissioner of C. Ex. & S.T. Pune .vs. Credit Suisse Services (I) Pvt. Ltd – 2015 (38) S.T.R. 473 (Bom.)** to contend that

this Court does not have jurisdiction to entertain this appeal as it deals with issue of rate of duty. The appeal, if any, from the impugned order would be before the Apex Court, in view of Section 35L of the Central Excise Act read with Section 83 of the Act.

4. Mr. Bhattad, learned counsel appearing for the Revenue strongly disputes aforesaid position. Mr. Bhattad states that the Revenue is not disputing the applicability of the exemption Notification No.9/2009-St dated 03.03.2009. The only issue being urged by the Revenue is with regard to the period for which the exemption can be granted, i.e. before the date of approval or after the date of approval of the services received.

5. However, we specifically pointed out that the question of law as framed for our consideration viz. Question Nos.2 and 3 hereinabove, does involve interpretation of the Notification No.9/2009-ST dated 03.03.2009. Question No.2 as framed seeks to deny benefit of the Notification on the ground that the services received were totally exempted from service tax and question no.3 seeks to deny the exemption in respect of the services received by the head office situated outside the SEZ Unit. The Revenue did not respond to the same. Nevertheless, Mr. Bhattad on instruction states that both these questions are being pressed by the Revenue. These questions to our mind, clearly relate to interpretation of the Notification.

6. In view of the above, as is evident from question Nos. 2 and 3 formulated hereinabove and being pressed by the Revenue for our consideration, the appeal is not being entertained by us. This is so as our jurisdiction is specifically barred under Section 35-G(1) r/w 35L of the Central Excise Act, as made applicable by virtue of Section 83 of the Act to the present appeal.

7. Accordingly appeal is dismissed. No order as to costs.

JUDGE **JUDGE**

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