FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CENTRAL EXCISE APPEAL NO. 15/2016
(THE PR. COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX, NAGPUR **VERSUS** M/S FABRIMAX ENGG. PVT. LTD., NAGPUR)

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

Shri S.N. Bhattad with Shri Kunal Nalamwar, counsel for the appellant.

CORAM : SMT. VASANTI A NAIK AND V.M. DESHPANDE, JJ.
DATE : FEBRUARY 22, 2017.

By this central excise appeal, the appellant-department challenges the order of the Customs Excise and Service Tax Appellate Tribunal, dated 17.06.2016, dismissing an appeal filed by the appellant-department and upholding the finding of the first appellate authority that the clearances made by the respondent-Assessee to International Competitive Bidding could be considered as export.

Shri Bhattad, the learned counsel for the appellant-department, submitted that the Tribunal was not justified in holding that the refund claim could have been made by the respondent-Assessee within one year from the relevant date, for which the claim was made. It is stated by referring to Notification No.27/2012 of the Government of India, Ministry of Finance, dated 18.06.2012 that the refund claim could have been made only at the end of the relevant quarter. It is submitted that the period of three consecutive months beginning from 1st of April of every year, would be the first quarter and accordingly at the end of each quarter, the assessee should have made the refund claim. Secondly, it is submitted that the Tribunal was not justified in holding that the clearances made by the assessee to international competitive bidding could be considered as exports.

There is no merit in both the submissions made on behalf of the appellant-department. On a reading of the Notification No.27/2012, dated 18.06.2012 on which great reliance has been placed by the appellant-department while canvassing that the claim should have been made at the end of the relevant quarter only, it appears that the submission is ill-founded. The procedure for filing the refund claims is prescribed in Clause 3 of the notification, dated 18.06.2012. Clause 3(b) of the notification clearly provides that the refund claim could be filed by the claimant before the expiry of the period specified in Section 11-B of the Central Excise Act. We have perused the provisions of Section 11-B of the Act. Section 11-B of the Act provides that a refund claim could be made by an assessee before the expiry of one year from the relevant date. It is not disputed that in the present case, the refund claim was made by the respondent-Assessee before the expiry of one year from the relevant date. The relevant provisions of the notification, specially Clause 3(b) were not considered by the department before raising the said ground. It is apparent from a reading of the notification, dated 18.06.2012 and the provisions of Section 11-B of the Act that the refund claim could have been made before the expiry of one year from the relevant date. The finding of the Tribunal that the refund claim made by the respondent-Assessee was not time barred is just and proper and cannot be interfered with.

So also, there is no merit in the submission made on behalf of the appellant-department that the Tribunal was not justified in coming to the conclusion that the clearances made by the assessee to international competitive bidding could be considered as exports. The appellate authority as well as the Tribunal have held that by the show cause notice, the respondent-Assessee was not asked to show cause why the clearances made to international competitive bidding cannot be considered as exports. Since the assessee was not asked to show cause on the aforesaid question, the appellate authority and the Tribunal rightly held by relying on the judgment of this Court in the case of *Bajaj Auto Limited*, reported in **2003 (151) ELT 53** that the grounds in appeal cannot travel beyond the show cause notice.

Since there is no merit in either of the submissions made on behalf of the department, the appeal is dismissed with no order as to costs.

JUDGE **JUDGE**

APTE