IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO. 11 OF 2016

Sterlite Optical Technologies Limited .. **Appellant**
Versus
The Commissioner of Central Excise & ST .. **Respondent**

Shri Jitendra Motwani, Advocate h/f Shri Amit A. Yadkikar, Advocate for the Appellant.
Shri D. S. Ladda, Advocate for Respondent / Sole.

CORAM : S. V. GANGAPURWALA & A. M. DHAVALE, JJ.

DATE : 1st February, 2018

PER COURT :

1. The present appeal is filed against the order of the Tribunal thereby allowing appeal of the department. The issue before the Tribunal was regarding the Service Tax liability on the amount paid by the present appellant to officers agents appointed as Commission Agents for procuring export orders for the appellant.

2. Learned advocate for the appellant, amongst the other grounds submits that the appellant at no material point of time

received any notice of hearing from the Tribunal and in absence of the present appellant the Tribunal has decided the appeal.

3. Mr. Ladda, learned advocate for the respondent submits that after the department filed an appeal before the Tribunal, the Tribunal had issued notice to the other side thereby providing opportunity of filing Cross-objection. The appellant failed to file any Cross-objection before the Tribunal. The appellant cannot turn around and contend otherwise.

4. We had asked the learned advocate for the appellant as to whether the duty under appeal has been paid. The learned advocate, on instructions, states that the entire duty under the impugned order has been paid.

5. Upon perusal of the order of the Tribunal it transpires that the appellant had not appeared before the Tribunal. The Tribunal has observed as under-

> ***"2. None appeared on behalf of the appellant nor there was any request for adjournment. Since the issue involved in this case is in a narrow compass, we take up the appeal for disposal in the absence of any representation from respondent."***

6. The contention of the appellant is that the notice of the appeal was never served upon the appellant. The said aspect has not been categorically denied by the respondent.

7. Be that as it may, we may not enter into the said debate. Even the order of the Tribunal shows that the appellant was not before the Tribunal and considering the fact that the appellant has deposited the entire duty under question, we are inclined to grant one more opportunity to the appellant.

8. In the light of above, the impugned order of the Tribunal is quashed and set aside. The parties are relegated before the Tribunal. The parties shall appear before the Tribunal on 21st February, 2018. As this court has given the date of appearance, it will not be necessary for the Tribunal to issue fresh notice. The Tribunal shall after hearing the parties, decide the appeal afresh on its own merits.

9. The Central Excise Appeal accordingly partly allowed. No costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

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