IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 250 OF 2016

The Principal Commissioner of Central Excise, Pune-I	}	**Appellant**
versus		
M/s. Trans Engineers India Pvt. Ltd.	}	**Respondent**

Mr. Swapnil Bangur with Mr. Sham Walve
for the appellant.

None for the respondent.

CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE :- JANUARY 16, 2018

P.C. :-

1. We have heard Mr. Bangur appearing for the revenue in support of this appeal. He brings to our notice the finding recorded in the order of the Central Excise and Service Tax Appellate Tribunal (CESTAT) impugned in this appeal. He also says that the questions proposed by the Revenue squarely arise from this order for the Division Bench judgment relied upon in the order under appeal has no application to the facts and circumstances of the present case.

2. Upon a reading of the order under appeal in its entirety, we are unable to agree. It is undisputed that the show cause notice

invoked the extended period. That is beyond a normal period of one year. For the extended period to be invoked, there are certain pre-requisites and pre-conditions, which the Revenue has to satisfy in terms of the statutory provision, namely, section 11A of the Central Excise Act, 1944. The tribunal found from the factual matters that there were not one, but two audits and the second one was for the overlapping period. If during both, the Revenue could not trace out anything, which was held back by the assessee or was unable to unearth from the records the necessary materials to allege suppression, then, the invocation of the extended period was impermissible. There were no materials to indicate that there is any short payment of duty with intent to evade service tax.

3. Such a finding of fact and relying on a Division Bench judgment is imminently possible. Once there is no perversity in the order under appeal nor the same is vitiated by any error of law apparent on the face of the record, then, we are not obliged to entertain this appeal. There is no substantial question of law arising for our consideration. Consequently, the appeal fails and it is dismissed, but without any order as to costs.

(SMT. BHARATI H. DANGRE, J.) **(S.C.DHARMADHIKARI, J.)**