Sharayu Khot.

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

CENTRAL EXCISE APPEAL NO. 21 OF 2018

Vascon Engineers Limited **...Appellant**

Versus

The Commissioner of Central Excise, Pune III **...Respondent**

Mr. Jitendra Motwani, i/b Economic Laws Practice, for the Appellant.

Mr. Vijay Kantharia, a/w Mr. J.B. Mishra, for the Respondent.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 8 October 2018

ORDER :

1. This Appeal under Section 83 of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944

challenges the order dated 27th July 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "***the Tribunal***").

2. Shri. Motwani, the learned Counsel appearing in support of the Appeal, urges the following substantial question of law for our consideration:-

> Whether in the facts and circumstances of the case and in law was the Tribunal right in holding that the service provided by the Appellant shall be classified as 'management, maintenance and repair service' and not as 'commercial and industrial construction service'?

3. It is undisputed position before us as is evident from the question framed that the issue which arises in this Appeal with regard to the appropriate classification of the services rendered by the Appellant.

4. The Supreme Court in the case of ***Navin Chemicals Mfg. & Trading Co. Ltd. Vs. Collector of Customs***[1] has *inter alia* held that the words "the determination of any question having a relation to the rate of customs duty of the valuation of goods for the purposes of assessment of duty" *inter alia* would include an issue of classification. Therefore, in terms of Section 83 of the Finance Act, 1994 read with Section 35G(1) of the Central Excise Act, 1944, the Appeal on issue of classification is not maintainable before this Court. The remedy for the Appellant, if any, is to file an Appeal to the Hon'ble Supreme Court under Section 35G(1)(b) of the Central Excise Act, 1944 as made applicable to the Finance Act, 1994 by Section 83 thereof.

5. This the Appeal is dismissed as not maintainable.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**

1 ***1993(68) E.L.T. 3 (S.C.)***