jsn

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

CENRAL EXCISE APPEAL NO. 108 OF 2017

Sharda Cropchem Limited … Appellant
Versus
The Commissioner of Service Tax, Mumbai – I …Respondent

Mr. Gajendra Jain with Jas Sanghvi I/b PDS Legal for Appellant.
Mr. Swapnil Bangur, I/b Shalaka Gujar for Respondent.

CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.
DATED: 21ST AUGUST, 2018

PC:-

1. This Appeal under Section 35G of the Central Excise Act, 1944 challenges the order dated 17th October, 2016 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal)

2. The Revenue in Appeal urges the following questions of law for our consideration:-

(a) *Whether in the facts and circumstances of the present case, the Appellate Tribunal erred in making prima facie findings / observations while remanding the matter without expressly stating that all questions of law and fact are left open on remand?*

3. As is evident form the proposed question, the impugned order dated 17 October 2016 of the Tribunal has restored / remanded the dispute to the original authority i.e. the Assistant

Commissioner of Customs. The grievance of the Appellant is not to the remand but only to certain *prima facie* observations in the impugned order. This the Appellant fears would influence the adjudicating authorities to their prejudice. Therefore, all the Appellant seeks is that the adjudicating authority will decide the issue in accordance with law without being influenced by the *prima facie* observations.

4. We note that the impugned order of Tribunal has admittedly used the word "*prima facie* it seems …..". Thus it is not a final view of the Tribunal. It further goes on to state that to ascertain status of the Appellant the facts would have to be ascertained in context of the bills and invoices raised by services provider, treatment of payment transaction etc. and only thereafter the application of judgments to the facts existing in this case could arise. This would indicate that the *prima facie* view of the Tribunal is a tentative view subject to examination of the facts. Therefore, the *prima facie* observations would not *per se* influence the adjudicating authority. However, to allay the fears of the Appellant, we direct that the adjudicating authority to decide the issue before him in accordance with law treating the *prima facie* observations of the Tribunal as tentative view subject to change if necessary, at the hands of the Adjudicating Authority on examination of facts.

5. In the above view, the question as proposed does not give rise to any substantial question of law. Thus not entertained.

6. Appeal disposed of with the above directions.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**