IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 332 OF 2018
IN
CENTRAL EXCISE APPEAL (L) NO. 56 OF 2018

The Commissioner of CGST &K Central Excise
Navi Mumbai Commissionerate .. Appellant
v/s.
M/s. Bharat Bijlee Ltd. ..Respondent

Mr. Bhuvan Thakker I/b Malvi Ranchoddas & Co. for the appellant
Mr. Pradeep S. Jetly a/w Mr. J.B. Mishra for the applicant

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

DATED : 14th SEPTEMBER, 2018.

P.C.

1. This motion has been taken out for condonation of 11 days delay in filing the appeal arising under the Central Excise Act, 1944 (Act) from the order dated 17th August, 2017 passed by the Customs, Excise and Service Tax Tribunal (Tribunal).

2. Mr. Thakker, learned Counsel appearing for the respondent tenders an affidavit of Mr. Yogendra Agarwal, the Chief Financial Officer of the respondent herein. In the affidavit, it is stated that the impugned order dated 17th August, 2017 of the Tribunal has been challenged by the respondent before the Hon'ble Supreme Court being

Civil Appeal No.1321 of 2018 and the same has also been admitted on 22nd January, 2018. In the above view, it is submitted by Mr. Thakker that this appeal would not be maintainable before this Court.

3. Mr. Jetly, learned Counsel appearing for the applicant presses the appeal on the ground that the issue being raised in the accompanying appeal is with regard to the impugned order of the Tribunal not following the earlier directions of the Hon'ble Supreme Court. Therefore, according to him this appeal would be maintainable before this Court.

4. We note that as impugned order is the subject matter of appeal which has been admitted by the Hon'ble Supreme Court. This could only be on the Hon'ble Supreme Court being satisfied that the issue arising in the appeal is with regard rate of duty or valution i.e. pertaining to orders appealable under the Act before it. Moreover, we have already held in ***APM Terminals (I) Pvt. Ltd. Vs. Commissioner of Central Excise*** (C.E. Appeal N.124 of 2017) dated 6th September, 2018 and in ***Commissioner of Central Excise Vs. Eon Hinjewadi Infrastructure (P) Ltd.*** (Central Excise Appeal No.61 of 2017) decided on 3rd September, 2018 that the jurisdiction of this Court to entertain

appeals under Section 35G of the Act is determined by the order passed by the Tribunal and not on the basis of the question framed by the appellant. Thus, this Court does not have jurisdiction to entertain the appeal. Therefore, it would be appropriate if the applicants also file their appeal from the impugned order to the Hon'ble Supreme Court, if they are so advised. This would also avoid multiplicity of the proceedings.

5. In view of the above, we find merit in the submission made by Mr. Thakker. Therefore, the motion is dismissed as the impugned order is already a subject matter for consideration in an appeal before the Hon'ble Supreme Court.

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