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

CENTRAL EXCISE APPEAL NO. 88 OF 2017

AA's Ad Aids … Appellant
Versus
The Commissioner of Central Excise Pune I Commissionerate & Anr. …Respondents

Mr. Sachin Suresh Kulkarni, for the Petitioner.
Mr. Swapnil Bangur I/b. Sham Walve, for Respondents.

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 5th October, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal)

2. The Appellant urges only following two questions of law for our consideration:-

(a) *Whether the CESTAT was justified in holding that the Communication dated 18.03.2015 from the Superintendent is NOT Decision or Order?*

(b)Whether the CESTAT was justified in holding that the appeal is not maintainable in view of Section 35B (1) of the Central Excise Act, 1944?

3. On 21st October, 2013 the Assistant Commissioner of Central Excise passed an order confirming a demand of Rs.1,90,010/- under Section 11A of the Central Excise Act and also imposing equivalent of penalty. It also orders recovery of interest at the appropriate rate. The above order was received by the Appellant on 3rd December, 2013.

4. On 3rd April, 2014, Appellant addressed a letter to the Superintendent of Central Excise seeking quantification of interest paid under the order dated 21st October, 2013. Consequent thereto it was on 18th March, 2015 the Superintendent of Central Excise communicated the amount of Rs.16,530/- was payable as interest.

5. It is this order dated 18th March, 2015 which was carried in Appeal to the Commissioner of Central Excise (Appeals). By an order dated 22nd May, 2015, the Commissioner of Central Excise (Appeals) dismissed the Appeal as the communication received from the Superintendent of Central Excise was not appellable order / decision.

6. Being aggrieved, Appellant filed a further Appeal from the order dated 22 May 2015 to the Tribunal. The impugned order dated 5 October 2015 of the Tribunal dismissed the Appeal as not maintainable. This by recording the fact that communication of

the Superintendent only communicates to the Appellant the amount of interest due from it. It did not decide any dispute / lis. Consequently, it upheld the order dated 22 May 2015 of Commissioner of Central Excise (Appeals). It also held that as such quantum is less than Rs.2 lakhs of interest computed by the Superintendent of Central Excise. Thus the Appeal was not also entertained in view of the second proviso of Section 35B (1) of the Act.

7. We find that the impugned order of the Tribunal has on perusal of the letter dated 18th March, 2018 received by the Superintendent of Central Excise held that it does not decide any lis for the purpose of holding it to be an appellable order. This finding is a possible view on facts and circumstances of the case and cannot be said to be perverse. The decision of Gujarat High Court in the case of ***Commissioner of Central Excise and Customs Vs. Swati Chemical Industries***[1] relied by the Appellant is completely distinguishable on facts. In that case there was no question of deciding whether a communication from the Superintendent of Central Excise not deciding a lis / dispute as in this case for being an appellable order. Thus the aforesaid decision has no application to the present facts.

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1 2013 (294) E.L.T. 208 (Guj).

8. In the above view, the question (a) proposed does not give rise to any substantial question of law. Consequently question (b) as proposed also become academic. Thus not entertained.

9. Accordingly, the Appeal dismissed.

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