

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

**CENTRAL EXCISE APPEAL NO. 293 OF 2016**

M/s. Maneesh Export (EOU) & Ors. .. Appellants

v/s.

Union of India & Ors. .. Respondent

Mr. Rupesh Goankar a/w Mahi Lalka i/b Ashok Singh for the appellant  
Mr. Swapnil Bangur for the respondent

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

**DATED : 4<sup>th</sup> JANUARY, 2018.**

**P.C.**

1. This appeal under Section 35G of the Central Excise Act, 1944 (the Act) challenges the order dated 30<sup>th</sup> November, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal). By the impugned order dated 30<sup>th</sup> November, 2015, the appeal of the appellant was dismissed for failure to comply with the requirement of pre-deposit of 7.5% of the duty / penalty in terms of Section 35F of the Act consequent to amendment thereto w.e.f. 6<sup>th</sup> August, 2014.

2. The appellant urges the following question of law for our consideration :-

*Whether on the facts and circumstances of the case, the Tribunal was correct in holding that the appeal of the appellant would govern by the pre-amended Section 35A of the Act, even when the lis has commenced prior to the date of the amendment ?*

3. It is an agreed position between the parties that the issue raised herein stands concluded against the appellant assessee and in favour of the Revenue in ***Nimbus Communications Ltd. Vs. Commissioner of S.T. Mumbai-IV, 2016 (44) S.T.R. 578.***

4. Thus, we see no reason to entertain this appeal in view of the decision of this Court in *Nimbus Communications Ltd.* (supra) concluding the issue in favour of respondent – Revenue.

5. At this stage, Mr. Goankar, learned Counsel appearing for the appellant seeks extension of time by 4 weeks to deposit 7.5% of amount in terms of Section 35F of the Act. Time as sought for is granted. However, in case, the appellant fails to make the deposit within a period of 4 weeks from today to the satisfaction of the Tribunal, this order enabling the appellant to make the necessary deposit so that its appeal can be heard on merits, stands withdrawn without reference to Court.

6. Save the above directions, the appeal filed by the appellant is dismissed.

**(RIYAZ I. CHAGLA, J.)**

**(M.S. SANKLECHA, J.)**