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

CENTRAL EXCISE APPEAL NO. 263 OF 2017

M/s. Bharat Bijlee Ltd. … Appellant
V/s.
The Commissioner of Central Excise, Belapur Commissionerate … Respondent

Ms. Padmavati Patil, with Ms. Mansi Patil, for the Appellant.
Mr. Pradeep S. Jetly with Mr. Ram Ochani, for the Respondent.

CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.
DATE: 10TH OCTOBER, 2018.

PC:-

1. This Appeal under Section 35 G of the Central Excise Act, 1944 challenges an order dated 3rd May, 2017 passed the Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

2. The Appellant urges the following question for our consideration.

Jitendra Shankar Nijasure
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> ***"Whether on the facts and in the circumstances of the case and in law was the Tribunal justified in remanding the matter second time in second round of litigation to the Adjudicating Authority for submission of documents, in a case where, neither the Lower Authorities nor CESTAT in earlier round had an issue of requirement of any documents and, in any case, for deciding the issue the requisite documents were on record in appeal before CESTAT"?***

3. The grievance of the Appellant is that the impugned order dated 3rd May, 2017 ought not to have restored / remanded the

issue to the Adjudicating Authority for fresh adjudication and should have disposed of the appeal finally.

4. It is undisputed before us that issue which arises in the impugned order of the Tribunal is with regard to valuation of transformers. The documents which are being relied upon by the Appellant are for the purposes of deciding the issue of valuation of transformers for purpose of assessment.

5. In the above view, as the issue in this Appeal relates to valuation of Transformers for the purposes of assessment, an Appeal against such order is not maintainable before this Court under Section 35G of the Act. In fact in a similar issue which arose before us in ***Commissioner of CGST and C.Ex. Vs. Mahindra and Mahindra Ltd***[1]., we held that the Appeal is not maintainable before this in view of Section 35G of the Act. The reasons therein would equally apply to the present facts. The remedy, if any, to the Appellant is to approach the Hon'ble Supreme Court under Section 35 L(1)(b) of the Act.

6. Thus this Appeal is dismissed as not maintainable.

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

1 Central Excise Appeal No. 6 of 2018 dated 19th September, 2018.