

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 133 OF 2016**

Commissioner of Central Excise, Pune III	}	
	}	Appellant
versus		
Kumar Housing Corporation Ltd.	}	
	}	Respondents

Mr. M. Dwivedi with Ms. Shalaka Gujar
for the appellant.

Mr. M. H. Patil i/b. Ms. Mansi Patil for the
respondent.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE :- JANUARY 22, 2018

P.C. :-

1. We have heard both sides.
2. The Revenue is in appeal against the order passed by the Central Excise and Service Tax Appellate Tribunal (CESTAT) on 1st April, 2014.
3. Mr. Dwivedi learned counsel appearing in support of this appeal would not dispute that the eventual direction in this order is a remand to the adjudicating authority. However, he would submit that the tribunal has taken a definite view of the matter as is apparent from para 5.3 of the order under appeal and hence

the remand is just a formality. It is, therefore, the Revenue is aggrieved and in any event, the appeal projects a substantial question of law.

4. With the assistance of Mr. Dwivedi and Mr. Patil, we perused the order under appeal. The tribunal had before it an appeal of the assessee. There was a group of appeals and one of them was directed against the order dated 26th August, 2013 of the Commissioner of Central Excise and Service Tax, Pune confirming the demand of duty of Rs.1,91,06,342/-. The demand comprises of central excise duty in the sum of Rs.1,13,37,692/- and customs duty of Rs.77,68,650/-.

5. The two notifications, benefit of which was sought, are dated 31st March, 2003 and 13th August, 1993.

6. Needless to clarify that the factual position, as narrated, is that the assessee is a registered 100% Export Oriented Unit (EOU) under the Software Technology Park (STP) Scheme. They set up infrastructural facility for software technology park. They were also granted licence for bonded warehouse under section 58 of the Customs Act, 1962 by the customs department at Pune. Undisputedly, certain capital goods were procured. The assessee availed of the benefit of the two notifications. They applied for de-

bonding of the capital goods procured to the Director of the Software Technology Park, Pune and agreed to pay customs/excise duty on depreciated capital value of the goods. They also intimated to the jurisdictional excise department accordingly. The application for de-bonding was considered by the Department of Information and Technology, which directed the assessee first to pay all duties on capital goods and obtain no-objection certificate for grant of de-bonding. The assessee worked out a duty liability on depreciated value amounting to Rs.56,58,163/- and paid the same and sought a no-dues certificate. However, a show cause notice was issued proposing to recover the entire excise duty forgone and in the above sum. That was adjudicated and the order under challenge before the tribunal was passed. The argument was that there are no notifications or scheme allowing payment of duty at the stage of de-bonding at the depreciated value. The Revenue argued that the notifications in question did not provide for any such scheme.

7. The tribunal noted the rival contentions and all that it did in para 5.3 was to invite the attention of the Revenue to certain notifications, Central Board of Excise and Customs Circulars right from 1994, which, in the opinion of the tribunal, allow depreciation of capital goods at the time of de-bonding. It gave

illustration as to how the notifications were applied and in the cases of 100% EOU as well that scheme operates. Finally, the tribunal referred to the two notifications. Beyond all this and which had missed the attention of the adjudicating authority, the tribunal did not render any definite or final opinion. It is in these circumstances that the tribunal directed a remand on the second occasion. That is because the Revenue argued, according to the tribunal's opinion and prima facie contrary to its own circulars and notifications issued from time to time.

8. That is why the assessee was also mandated to follow the prescribed procedure. If that has been fulfilled, then, the duty liability in terms of the Revenue scheme had to be worked out. We do not see how such an order, by which the tribunal did not allow the appeal of the assessee but remanded the matter to the adjudicating authority, results in a substantial question and arising for our consideration. This is an order imminently possible in the facts and circumstances of the case. Once we have clarified that no definite opinion other than inviting the attention of the Revenue to its own scheme was rendered by the tribunal, then, all the more we are disinclined to entertain this appeal. It is dismissed, but without any order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)