R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CENTRAL EXCISE APPEAL NO. 97 OF 2018

CEAT Limited .. Appellant

Versus

The Commissioner of Central Excise, Nashik .. Respondent

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- Mr. Prakash Shah a/w Mr. Jas Sanghavi i/by PDS Legal for the Appellant
- Mr. Pradeep S. Jetly a/w Mr. J.B. Mishra for the Respondent

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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : DECEMBER 12, 2018.

P.C.:

1. This appeal under Section 35G of the Central Excise Act, 1944 ("**the Act"** for short) challenges the order dated 17.4.2017 passed by the Customs, Excise & Service Tax Appellate Tribunal ("**the Tribunal**" for short).

2. The appellant has urged following questions of law for our consideration:-

> " Whether in the facts and circumstances of the case and in law, was the Tribunal correct in remanding the matter specially when this Court in the appellant's own case for Bhandup factory in identical

circumstances has held the issue in favour of the appellant?"

3. Appeal admitted on the above question of law. However, as the dispute is with a narrow compass, the appeal is itself being taken up for final disposal at this stage, at the request of the counsel for both sides.

4. The issue arising in this appeal before the Tribunal was in regard to utilization of credit of additional excise duty under Additional Duties of Excise (Goods of Special Importance) Act, 1975. The grievance of the appellant is that this issue stands concluded in favour of the appellant-assessee by the decision of this Court in its own case reported in **Commissioner of Central Excise, Mumbai - III Vs. CEAT Ltd**[1], yet the impugned order of the Tribunal has restored / remanded the issue to the adjudicating authority. This only to await the outcome of the SLP filed by the Revenue challenging the order of this Court in CEAT Ltd (supra). Besides, the impugned order of the Tribunal also prohibited the appellant from utilizing the quantum of unutilized credit available to it in respect of additional excise duty till the Supreme Court decides the SLP filed by the

1 2013(298) E.L.T. 525 (Bom.)

Revenue from the earlier order. This by completely ignoring the absence of any stay to the order passed by this Court in CEAT Ltd (supra).

5. We are unable to approve the manner in which the Tribunal has dealt with the appeal before it. There was no further investigation of facts which had to be carried out which could have necessitated remand to the adjudicating authority. When there is no further inquiry necessary to be done, the Tribunal or any appellate authority is not expected to remand the matter to the subordinate authority to decide the issue which the appellant authority can itself decide. As evident from the order, there is no further enquiry to be done. Nevertheless, the Tribunal by remanding the matter to the adjudicating authority even though it stands concluded by the decision of this Court and directing the appellant not to utilize the un-utilize credit till the outcome of the SLP filed from the order of CEAT Ltd (supra) is decided by the Supreme Court is a direction without jurisdiction. In fact, by implication the Tribunal has attempted to stay the order of this Court till the Hon'ble Supreme Court decides the

Revenue's SLP from the order i.e CEAT Ltd (supra).

6. It is axiomatic that the orders of this Court are binding upon the Tribunal. In the absence of any higher forum staying the orders of this Court, the Tribunal being an authority within the State of Maharashtra is obliged to follow and implement the decision of this Court.

7. In these circumstances, the remand directed by the impugned order of the Tribunal was not justified. Therefore, substantial question of law is answered in the negative that is in favour of the appellant and against the respondent.

8. Therefore, we set aside the impugned order of the Tribunal and restore the appellant's appeal before it, for fresh hearing and disposal by the Tribunal in accordance with law.

9. The appeal is disposed of in the above terms.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**