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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CEAC 28/2017

THE PR. COMMISSIONER OF GST, DELHI SOUTH COMMISSIONERATE ..... Appellant

Through Mr. Harpreet Singh, Sr. Standing Counsel & Ms. Bhavya Dubey, Advocate.

versus

PRECISION PIPES & PROFILES CO. LTD. ..... Respondent

Through Mr. R. Santhanam & Mr. A.P. Sinha, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE SANJIV KHANNA**
**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**<u>O R D E R</u>**

**%** **11.01.2018**

Having heard counsel for the parties, we are inclined to frame the following substantial question of law:-

(i) Whether the Customs, Excise and Service Tax Appellate Tribunal was right in allowing the appeal preferred by the assessee holding that the Revenue could not have applied the extended period of limitation?

Counsel for the appellant had drawn our attention to decision of the Allahabad High Court in ***Commissioner of Central Excise, Customs and Service Tax, Noida versus Precision Pipes and Profiles Company Limited***, 2014 (302) ELT 184 (All.), wherein judgment of the Tribunal in the case of respondent assessee was set aside. Tribunal in the impugned order has followed, the overruled judgment. The impugned order merely quotes from the overruled judgement of the Tribunal.

Mr. R. Santhanam, Advocate, who appears for the respondent, fairly states that the Tribunal had relied upon an earlier decision in the case of the assessee, which has been reversed by the Allahabad High Court with an order of remand. It is also stated that the order passed by the Allahabad High Court is an ex-parte order. In the present case, he has no objection if the impugned order is set aside with an order of reward. He states that the Tribunal has not decided the question whether the respondent assessee was entitled to CENVAT credit of additional customs duty paid through DEPB receipts.

In view of the statement made by Mr. R. Santhanam, Advocate, we are setting aside the impugned order with a direction for remand, without commenting on merits. We would clarify that the issue would be examined afresh, without being influenced by the observations made in the impugned order. The respondent-assessee states that he would also request the Tribunal to examine the question whether benefit of CENVAT credit is available on merits as well as limitation. The Revenue state that they would be entitled to rely on the judgment of the Allahabad High Court. The questions of law is accordingly answered in favour of the Revenue, but without expressing any opinion on merits with an order of remand. The appeal is disposed of, without any order as to costs.

**SANJIV KHANNA, J.**

**CHANDER SHEKHAR, J.**

**JANUARY 11, 2018**
**VKR**