NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 25 of 2018

- Rakesh Singh S/o Shesh Pratap Singh Aged About 39 Years R/o Police Line, Urdana, P.S. Kotwali, Raigarh, Civil And Revenue District Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh **---- Appellant**

Versus

- The Commissioner Of Central Excise And Service Tax Central Excise Building, Dhamtari Road, Tikrapara, Civil And Revenue District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh **---- Respondent**

For Appellant	:	Shri Avinash Singh, Advocate
For Respondent	:	Shri Maneesh Sharma, Advocate

Hon'ble Shri Prashant Kumar Mishra, Actg CJ &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board by Prashant Kumar Mishra, Actg CJ.

03.04.2019

1) This appeal under Section 35G of the Central Excise Act, 1944 (for short, 'the Act') has been admitted on the following substantial question of law:

> *"Whether the Tribunal having held that the argument with regard to limitation was raised, was justified in rejecting the application on the ground that the point raised was impliedly rejected?"*

2) Challenging the order in appeal passed by Commissioner of Central Excise (Appeals), Raipur on 30.08.2013, the petitioner preferred an appeal before the Tribunal which came to be decided on 14.06.2017 remitting the matter back to the AO(Assessing Officer), providing opportunity to the appellant to defend on taxability except to the extent of relief granted by the learned Commissioner (Appeals). No order as to the appellant's challenge to the tax liability on the point of limitation was passed by the Tribunal. The appellant thereafter moved an application for modification submitting that he had raised the issue of limitation/time barred but the

Tribunal has not given any finding. On this occasion the Tribunal, by the impugned order, observed that it has impliedly rejected the plea as to limitation.

3) When a *quasi* judicial authority considers legality and validity of an order on certain grounds including the ground of limitation, the said ground can never be impliedly rejected. Plea of limitation being an important defence available to the Assessee as assessment after certain period is required to be made on certain foundations as provided in Section 11AC of Central Excise Act 1944 read with Section 73(1) of Finance Act, 1994, the said plea cannot be impliedly rejected as the authorities are required to be satisfied about existence of the pre-requisites as contained in the said provision. Even otherwise, if the matter has been remitted back to the AO for decision afresh, there is no harm in allowing the appellant to raise the plea of limitation before the AO which can be simultaneously decided by the AO.

4) In view of above, the impugned order dated 24.11.2017 passed by the Tribunal is set aside with a direction that while hearing the matter upon remand by the Tribunal by its order dated 14.06.2017, the AO shall also decide the issue of limitation raised by the appellant. The substantial question of law is answered accordingly.

Sd/-	Sd/-
Actg Chief Justice	Judge
(Prashant Kumar Mishra)	(Parth Prateem Sahu)

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