IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 2492 OF 2019

Alkem Laboratories Ltd., .. Petitioner.
v/s.
The Union of India & Another .. Respondents.

Mr. Shriram Shridharan with Mr. Jas Sanghavi i/b. PDS Legal, for the Petitioner.
Mr. Sham Walve with Ms. Maya Majumdar, for the Respondents.

CORAM: M.S.SANKLECHA &
NITIN JAMDAR, JJ.
DATE : 9th OCTOBER, 2019.

P.C:-

This Petition under Article 226 of the Constitution of India, challenges the order dated 26th July, 2018 passed by the Respondent No.2 - Additional Commissioner, Central GST Commissionerate, Daman. The impugned order dated 26th July, 2018 has confirmed the notice issued under Section 11A of the Central Excise Act, 1944 (the Act), demanding an amount of Rs.21.85 lakhs of CENVAT Credit, besides imposing an equivalent penalty. This on the basis that the Petitioner is not entitled to CENVAT Credit of the duty paid on that part of Furnace Oil, which was used for generation of steam supplied to its sister concern.

2 The impugned order dated 26th July, 2018 has been passed by Respondent No.2, consequent to the order dated 17th July, 2015 of the Customs, Excise & Service Tax Appellate Tribunal (the Tribunal). The above order of the Tribunal dated 17th July, 2015 had followed the order

dated 28th August, 2014 of its Co-ordinate bench in respect of the same party (Petitioner) for an earlier period, thus, holding that the Petitioners are entitled on merits to take CENVAT Credit on the duty paid on Furnace Oil used in the generation of steam supplied to its sister concern. However, while so holding, the order dated 17th July, 2015 of the Tribunal, had restored to the Assessing Officer the issue whether the final products manufactured by the sister concerns using steam received from the Petitioner were cleared on payment on duty or not?. It was on the above basis that, the quantum of CENVAT Credit entitlement would be determined. Thus, it was a limited remand to quantify the extent of CENVAT Credit available.

3 It is an agreed position between the parties that, the impugned order dated 26th July, 2018 of the Additional Commissioner goes beyond the remand order dated 17th July, 2015 of the Tribunal. This, in view of the fact that, it re-adjudicates the issue afresh on merits, when the remand order was only to decide the quantum final product cleared by the sister concern on payment of excise duty to determine the CENVAT Credit available.

4 In the above view, as it is an undisputed position between the parties that the impugned order dated 26th July, 2018 is contrary to the directions of Tribunal in its order dated 17th July, 2015. Therefore, the impugned order dated 26th July, 2018 is set aside.

5 The issue of determining the quantification of CENVAT Credit available to the Petitioner, is restored to the Respondent No.2 - Additional Commissioner for fresh determination, in accordance with the directions in order dated 17th July, 2015 of the Tribunal.

6 **Petition disposed of** in the above terms.

(NITIN JAMDAR,J.) **(M.S.SANKLECHA,J.)**