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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2317 OF 2019

New Era Fabrics Ltd. … Petitioner

V/s.

Appellate Tribunal of Customs & Ors. ... Respondents

Mr. M.M. Vashi, Senior Advocate a/w. Ms. Manisha Desai i/b. M.P. Vashi & Associates for the Petitioner

Mr. Pradeep S. Jetly a/w. Mr. J.B. Mishra for the Respondents

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, JJ.

DATE : 26 NOVEMBER 2019.

***P.C.* :-**

This Petition under Article 226 of the Constitution of India challenges the order dated 11 January 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal). The impugned order dated 11 January 2019 passed under Section 86 of the Finance Act, 1994 r/w. Section 35(2) of the Central Excise Act, 1944 (Act) dismissed the Petitioner's application for rectification of mistake in the order dated 5 July 2018 passed under

Section 86 of the Finance Act r/w. Section 35(1) of the Act by the Tribunal in the regular appeal of the Petitioner.

2. The Petitioner had been issued two show cause notices levying Service Tax. The first one was issued on 23 October 2015 seeking to recover Service Tax for the period 2010-11 to 2014-15. The second one was issued on 28 June 2017 seeking to recover Service Tax for the period 2010-11 to 2014-15. The Petitioners separately contested both the notices. However, the Commissioner of Service Tax passed a common adjudication order dated 29 September 2017 in respect of both the above notices. By the common adjudication order dated 29 September 2017, he confirmed the show cause notice dated 28 June 2017 and dropped the show cause notice dated 23 October 2015.

3. The Petitioners being aggrieved by the order of the Commissioner dated 29 September 2017 to the extent it confirmed the show cause notice dated 28 June 2017, filed an appeal to the Tribunal. As the amount in dispute was less than Rs.50 lakhs, the appeal was heard by a single member of the Tribunal. On 5 July 2018 the Tribunal allowed the Petitioner’s appeal by setting aside the order dated 29 September 2017 passed by the Commissioner of Service Tax and restored all issues before the adjudicating authority.

4. Thereafter the Petitioner being apprehensive that the

order dated 5 July 2018 of the Tribunal also set aside that part of the order of the Commissioner of Service Tax in its favour, filed a rectification application before the Tribunal. In its application it pointed out that the order dated 5 July 2018 of the Tribunal should be restricted only to the proceedings emanating from notice dated 28 June 2017 as the Appeal of the revenue from order of the Commissioner dated 29 September 2017 to the extent it emanated from notice dated 23 October 2015 is pending before the Division Bench of the Tribunal. The Tribunal by the impugned order dated 11 July 2019 refused to rectify the same holding that the order was dictated in the open court and in the presence of both sides. Thus, the rectification application was not maintainable as there was no apparent error in the order of the Tribunal.

5. Mr. Jetly, learned Counsel appearing for the Respondents very fairly states that the order of the Tribunal dated 5 July 2018 would only be restricted to the appeal filed by the Petitioner i.e. arising from show cause notice dated 28 June 2017 confirmed by the order of the Commissioner dated 29 September 2017. Mr. Jetly states that the Revenue's Appeal from order dated 29 September 2017 is arising out of the demand raised in the show cause notice dated 23 October 2015 is still pending before the Tribunal. In the above circumstances, that there was no occasion for the Petitioner to file rectification application as the order dated 5 July 2018 of the Tribunal is only restricted to the Petitioner's appeal which arise from

the confirmation of the show cause notice dated 28 June 2017.

6. Therefore, we are of the view that the Tribunal ought to have allowed the Petitioner's rectification application and restricted its order dated 5 July 2018 only to the show cause notice dated 28 June 2017 by which the Petitioner was aggrieved. The Tribunal could have addressed the above issue in favour of the Petitioners while disposing of the rectification application. Thus we set aside the impugned order dated 11 July 2019.

7. The parties are *ad-idem that* the order dated 5 July 2018 of the Tribunal deals only with the Petitioner's appeal and not with the Revenue's appeal which is pending with the Tribunal. Therefore, instead of restoring the Petitioners rectification application to the Tribunal for final disposal, we make it clear that the order of the Tribunal dated 5 July 2018 is only restricted to the Petitioner's appeal arising on account of confirmation of the show cause notice dated 28 June 2017. The Appeal filed by the Petitioner on 23 October 2018 is pending before the Division Bench of the Tribunal which will be taken up by the Tribunal on its own turn and decided on its own merits.

8. The Petition is disposed of in the above terms.

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