IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 109 OF 2019

Alkem Laboratories Ltd. .. Appellant
vs.
Commissioner of GST & Central Excise, Daman .. Respondents.

Mr. Bharat Raichandani i/b UBR Legal for the Appellant.
Mr. Swapnil Bangur a/w. Maya Majumdar for the Respondent.

CORAM: M.S. SANKLECHA &
M.S.SONAK, J.J.
DATE : 10 JULY 2019.

<u>P.C.:</u>

1] On 25th June 2019, we pass the following order:-

" *This appeal under Section 35G of the Central Excise Act, 1944 (the Act), challenges the order dated 1st February, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).*

2 The Appellant has urged the following question of law for our consideration:-

> *"Whether in the facts and circumstances of the case, the Tribunal was correct and justified in reaching a conclusion that no order on merits of the matter could be passed in as much as a decision of the tribunal in favour of the appellant was the subject matter of challenge before a High Court?"*

3 Appeal is admitted on the above substantial question of law.

4 The learned Counsel for the Respondent waives service.

5 As the issue involved in this appeal is within narrow campus – namely – justification in the Tribunal, remanding the issue to the lower authority when undisputedly the issue is covered in favour of the Appellant by the decision *of its Coordinate Bench in the case of Shree Rajasthan Syntex Ltd., v/s. Commissioner of Central Excise 360 ELT 106. Further, this remand is with a specific direction that the lower authority should await the result of challenge to the decision of the Tribunal in Shree Rajasthan Syntex Ltd., (supra), pending consideration before the Rajasthan High Court.*

6 Prima facie, it appears that the issue stands concluded by the decision of the Supreme Court in Union of India v/s. Kamalakshi Finance Corp. Ltd., 55 ELT 133. In the above case, it has been held that the Revenue has unreservedly follow the Appellate Authority's order, unless its operation has been stayed by a Higher Forum. The Court observed that if this rule is not observed, it would lead to unnecessary harassment of litigants. Thus, prima facie, the Tribunal ought to have directed the Revenue to follow the decision of its Coordinate Bench by itself following it.

7 At the request of the Respondent, this Appeal is fixed for final disposal on 9th July, 2019 at 3.00 p.m."

2] Today, Mr. Bangur, learned counsel appearing for the respondent – revenue, very fairly states that the issue stands concluded in view of the observations in *Kamalakshi Finance Corporation Ltd. (supra).*

3] In the above view of the matter, we answer the substantial question of law in the negative, i.e., in favour of the appellant -assessee and against the respondent – revenue. However, we restore the appeal to the file of the Tribunal for fresh disposal in accordance with law.

4] Appeal is disposed of with aforesaid directions.

(M. S. SONAK, J.) **(M. S. SANKLECHA, J.)**