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

CENTRAL EXCISE APPEAL NO.201 OF 2018

The Commissioner of Central Tax and
Central Excise, Mumbai

... Appellant

Vs.

Bharat Sanchar Nigam Limited

... Respondent

Mr. J.B. Mishra and Mr. Sham Walve for the Appellant.

CORAM : A.S.OKA AND
M.S. SANKLECHA, JJ.

DATE : 30th APRIL 2019.

P.C. :

1 This appeal under section 35G of the Central Excise Act (for short “the said Act”) challenges the order dated 21st July 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short “the Tribunal”).

2 On 26th March 2019, while admitting the appeal, we passed the following order :-

“Following substantial question of law arises:-

“Whether the CESTAT was right in setting aside the penalty while remanding back the matter for de-novo adjudication, without recording finding on merits of the case?”

2. Considering the nature of the question, this appeal deserves to be disposed of immediately. Accordingly, we issue

notice for final disposal on the aforesaid substantial question of law, returnable on 30th April, 2019. If the notice is served, Appeal to be listed under the caption of 'High on board'."

3 None appears for the respondent despite service.

4 We find from the impugned order of the Tribunal had while allowing the appeal of the respondent, the issue of eligibility CENVAT credit to the respondent was remanded for fresh consideration. In spite of the above, the impugned order goes further to record that no penalty would be levied upon the respondent without any reasons in support.

5 We note that the Tribunal is the fact finding authority under the Act and is required to deal both with the question of fact and law. The Tribunal should not as a matter of course remand the issues before it to the Adjudicating Authority, unless investigation into facts is required and this can be best carried out by the Adjudicating Authority. In the present case, we note that the impugned order only records certain decisions and proceeds to conclude that the said decisions were not considered by the Adjudicating Authority and therefore, the issue of eligibility of CENVAT credit was remanded to the Adjudicating Authority. In the appeal before the Tribunal, there were no fresh issues of facts which were required to be investigated. In fact there was no dispute on facts. The only question was of the applicability of law to the existing facts. The impugned order of the Tribunal while remanding the matter does not give any reasons to support its remand i.e. why it cannot adjudicate upon the matter on the basis of the material on record. Further, the impugned order deleted the penalty

when the issue on merits is remanded to the Adjudicating Authority. This manner of dealing with an appeal is a classic case of putting the cart before the horse.

6 Thus, the impugned order dated 21st July 2017 passed by the Tribunal is set aside. Appeal of the respondent is restored to the Tribunal for passing the fresh order in accordance with law.

7 For the above reasons, we pass the following order :-

- (i) Substantial question of law is answered in negative i.e. in favour of the appellant – revenue and negated against the respondent – assessee;
- (ii) The impugned order dated 21st July 2017 is set aside; and
- (iii) The Appeal of the respondent – assessee is restored to the Tribunal for the disposal in accordance with law.

8 Appeal disposed of in the above terms.

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)