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

CENTRAL EXCISE APPEAL NO. 228 OF 2007

The Commissioner of Central Excise
Belapur Commissionerate .. Appellant.
v/s.
M/s. Surindra Engg. Co. Ltd., .. Respondent.

Ms. P. C. Cardozo, for the Appellant.
Mr. Jas Sanghvi and Ms. Divyasha Mathur i/b. PDS Legal, for the Respondent.

CORAM: A.S.OKA &
M.S.SANKLECHA, JJ.
DATE : 22nd MARCH, 2019.

P.C:-

This Appeal under Section 35G of the Central Excise Act, 1944 (the Act), challenges the order dated 5th January, 2007 Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).

2 On 23rd July, 2008, this appeal was admitted on the following substantial question of law:-

> *"(a) Whether the CESTAT was correct in distinguishing the larger bench decision in the case of Kisan Sahakari Chini Mills Ltd. v/s. CCE, Kanpur, 2001 (131) ELT 370, which was rendered on the same question of law involved in the matter i.e. the validity of the modvat rules existed prior to 1-4-2000?*
>
> *(b) Whether the CESTAT was correct in holding that a case of substitution of rules as in this case is not protected by section 38A of the Central Excise Act, 1944?*

(c) Whether the CESTAT was correct in holding that the subject Show Cause Notice issued under Rule 57AH read with Section 11A of the Central Excise Act, 1944 is bad in law?”

2 It is an undisputed position before us that the tax effect involved in this appeal is Rs.23.96 lakhs. Therefore, the tax effect is less than Rs.50 lakhs being the minimum monetary limit prescribed by the Central Board for Indirect Taxes and Customs (CBIC) in its Circular dated 11th July, 2018 for the Revenue to purse this appeal. It is not the case of the Revenue before us that this appeal falls within the exclusion provided in the above Circular.

3 Our attention is drawn to the decision of this Court in Commissioner of CGST and Central Excise, Raigad Commissionerate v/s. M/s. Dorf Ketal Pvt. Ltd., (CEXA No. 155 of 2018) rendered on 19th December, 2018 . In the above case, on similar facts, this Court held that where the tax effect is less than Rs.50 lakhs and is not covered by the exception provided in CBIC Circular dated 11th July, 2018, an appeal cannot be filed and/or pursed by the Revenue. The Court while disposing the Revenue's appeal observed that, the above policy of the State is to be applied uniformly and not on pick and choose basis.

4 In the above view, the **Appeal** is **dismissed** in view of low tax effect. However, it is clarified that the substantial questions of law urged herein are left open, to be considered in an appropriate appeal.

(M.S.SANKLECHA,J.) **(A.S.OKA,J.)**

S.R.JOSHI