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

CUSTOMS APPEAL NO. 31 OF 2019

Currency Note Press, Nashik … Appellant
V/s.
Commissioner of Customs (I) ... Respondent.

Mr. Kunal Dutta a/w. Prashant Mishra for the Appellant.

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

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

DATE : 11 OCTOBER 2019.

P.C. :-

This Appeal under Section 130 of the Customs Act, 1962 challenges the order dated 11 January 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).

2. The Appellant urges the following question of law for consideration :-

> *"(a) Whether non-filing of appeal against the assessed Bill of Entry in which there was no lis between the importer and the revenue at the time of payment of duty will deprive the importer of his right to file refund claim under Section 27 of the Customs Act, 1972 ?"*

3. Mr. Dutta, learned Counsel appearing in support of the Appeal very fairly states that the issue now stands concluded against the Appellant – assessee by virtue of the decision of the Hon'ble Supreme Court in *ITC Ltd. vs. Commissioner of Central Excise, Kolkata (Civil Appeal No.293-204 of 2009)*. In the above decision dealing with an issue of refund without having challenged the order of assessment it has been held as under :-

> *" When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."*

4. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained. The Appeal is dismissed.

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