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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.18 OF 2019

The Commissioner of CGST &
Central Excise, Navi Mumbai ...Appellant
vs.
Vikhroli Corporate Park P.Ltd. ...Respondent

Mr.Sham Walve a/w Mr.Ram Ochani for the appellant
Mr.Bharat Raichandani for the respondent

CORAM : A.S.OKA, &
M.S.SANKLECHA,JJ.
DATE : APRIL 4, 2019

P.C.:

1 This appeal under section 35-G of the Central Excise Act,1944 read with section 83 of the Finance Act,1994 challenges the order dated 2nd December 2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short `CESTAT').

2 Following questions of law arise for consideration :

> “(a) Whether Tribunal was correct in treating the advance rent received and forfeited by the assessee as “Security deposit” relying upon judgment in the case of M/s.United Breweries Ltd. Vs. State of Andhra Pradesh – 1997 3 (Supreme Court Cases 530)?
>
> (b) Whether Tribunal was right in remanding

the issue of admissibility of Cenvat amounting to Rs.3.30 Crores without calling for cenvatable documents for verification, especially when the adjudicating authority has in his findings mentioned that no documents were provided to substantiate the eligibility of Cenvat claimed?”

3 As it is evident from the proposed question (a) the issue that arises for consideration is the valuation of the service provided by the respondent in respect of the renting of the immoveable property. The Revenue sought to include the notional interest on security deposit as part of the consideration received on providing service of renting immoveable property. The Tribunal by the impugned order held that the Revenue cannot include the notional interest on security deposit as consideration received for renting immoveable property services. Thus, the issue is one relating to valuation of service. In view of section 83 of the Finance Act,1994 which incorporates section 35G and 35L of the Central Excise Act, the appeal is not maintainable before this Court. The remedy of the appellant-Revenue would be by filing an appeal before the Hon’ble Supreme Court.

4 In the above circumstances, the appeal is dismissed as not maintainable.

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