IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL No. 68 OF 2019

Kinetic Engineering Ltd. .. Appellant
vs.
Commissioner of Central Excise
and Customs, Pune-III & anr. .. Respondents

Mr. Roshil Nichani, Mr. P.K. Shetty and Sparsh Prasad for the Appellant.
Mr. Ram Ochani for the Respondents.

CORAM: M.S. SANKLECHA, J.
AND M.S.SONAK, J.
DATE : 11 JUNE 2019.

P.C.:

1] On 4th June 2019, we passed the following order:

> ". *This Appeal under Section 35 G of the Central Excise Act, 1944 challenges the order dated 18th October, 2017 passed by the Custom Excise Service Tax Appellant Tribunal ("Tribunal").*
>
> *2. The Appellant urged the following question of law for our consideration.*
>
> *(i) Whether the expression capital goods cleared "as such" appearing in Rule 3(5) of Cenvat Credit Rules, 2004 could be interpreted to cover clearances of used capital goods ?*
>
> *3. The Appeal is admitted on the above substantial question of law.*
>
> *4. The Respondents waives service. Prima facie the issue raised in this Appeal seems concluded in favour of the Appellant/Assessee by virtue of the decision of the Aurangabad Bench of this Court in* ***Commissioner of Customs, Central Excise & Service Tax, Aurangabad vs. M/s. Kinetic Engineering Limited, Ahmednagar and others in Central Excise Appeal No. 2 of 2015 and other connected matter decided on 30th January,***

> ***2018.*** *Thus it could be taken up for final disposal.*
> *4. In the above view, at the request of the learned counsel for the Respondent, the Appeal is fixed for final hearing on 11th June 2019 at 3.00 p.m."*

2] Today, when the matter was called out, Mr. Ochani, learned counsel appearing for the respondents, very fairly states that the question raised herein was identical to the question No.C raised by the Revenue in Commissioner of Customs, Central Excise & Service Tax, Aurangabad vs. M/s. Kinetic Engineering Limited, Ahmednagar *(Central Excise Appeal No. 2 of 2015)* decided on 30th January, 2018 (supra) and it was answered against the Revenue and in favour of the respondent-assessee therein.

3] In the above view, for the reasons contained in the order dated 30th January 2018 in *M/s. Kinetic Engineering Ltd. (supra),* the substantial question of law is answered in the negative, i.e., in favour of the appellant-assessee and against the respondent – revenue.

4] The Appeal is allowed in the above terms.

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