

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

CENTRAL EXCISE APPEAL NO. 206 OF 2018

The Commissioner of CGST & Central Excise	.. Appellant
v/s.	
M/s. Radhakrishna Foodland Carriers Pvt. Ltd.	.. Respondent

Mr. Sham Walve a/w Mr. J.B. Mishra for the appellant
Mr. Sachin Chitnis for the respondent

**CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.
DATED : 16th APRIL, 2019**

P.C.

1. This appeal under Section 83 of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 challenges the order dated 30th January, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal). By the impugned order dated 30th January, 2017, the appellant's refund claim for Rs.32.82 lakhs was allowed. This on the basis that the respondent is entitled to the benefit of Notification No.1/2009-ST dated 5th January, 2009.

2. The appellant Revenue has urged the following questions of law for our consideration :-

(i) *Whether the Tribunal was right in holding that the condition*

of Notification No.1/2009-ST dated 05.01.2009 i.e. invoice of the service provider bearing the details of consignment note, cannot be expected to be complied with by the assessee as the condition was not prevailing at the time?

(ii) Whether the Tribunal was right in granting benefit of Notification No.1/2009-ST dated 05.01.2009 to the assessee, even though the only condition of Notification was not fulfilled?

3. From the above questions, it is very clear that the issue arising in the present appeal is with regard to applicability of an exemption Notification. Thus, it is a clear case of rate of duty issue. Therefore, in terms of Sections 35G and 35L of the Central Excise act, 1944 which have been incorporated in Section 83 of the Finance Act, 1994, the appeal filed by the appellant is not maintainable before this Court.

4. In the above view, the appeal, if any, from the impugned order of the Tribunal would lie before the Hon'ble Supreme Court.

5. Thus, the appeal not being maintainable before this Court is dismissed.

(M.S. SANKLECHA, J.)

(A. S. OKA, J.)