

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1696 OF 2021**

City & Industrial Development
Corporation of Maharashtra Ltd.

....Petitioner

V/s.

Commissioner CGST & Central Excise
Belapur Commissionerate

...Respondent

Mr. Sriram Sridharan for Petitioner.

Mr. Satyaprakash Sharma a/w Mr. Nikhil Singh for Respondent

**CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ**

DATED : 11th NOVEMBER 2022

P.C. :

1 We are faced with a peculiar situation. Petitioner's appeal was heard by a bench consisting of two members of CESTAT. The judgment authored by Technical Member has been signed by Judicial Member as well. At the same time, the Judicial Member has written a dissenting judgment but at the end of his judgment, he says he agrees with the Technical Member. In paragraph 7 of the dissenting judgment, the Judicial Member says he has difference of opinion on the findings of the Technical Member. If the Judicial Member did not agree with the Technical Member, the right thing would have been to refer to a third member, instead, the Judicial Member has started off by saying he disagrees with the Technical Member but in the end he says he agrees with the observations passed by the Technical Member.

2 We are informed that similar issue had arisen in Service Tax Appeal No.50553 of 2017 (CESTAT Delhi) in which, by an order dated 4th February 2022, the President and Technical Member have expressed their opinion that the papers may be placed before the President of the Tribunal to nominate a Larger Bench. In paragraph 17 of the order, the order impugned in the present petition is also referred to. Therefore, we hereby quash and set aside the impugned order dated 5th August 2019 and direct the matter be also tagged alongwith Service Tax Appeal No.50553 of 2017, to be heard by the Larger Bench, as and when constituted. Tribunal May decide whether it has to be heard by CESTAT Delhi or CESTAT Bombay.

3 Petition disposed.

(A. S. DOCTOR, J.)

(K.R. SHRIRAM, J.)