

S.R.JOSHI

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

CENTRAL EXCISE APPEAL (L) NO.32228 OF 2023

Commissioner of CGST & Central Excise	]	
Thane – Rural, 4 th Floor, GST Bhavan, Plot	]	
No.C-24, Sector-E, Bandra Kurla Complex,	]	
Bandra (East), Mumbai 400 051.	]	.. Appellant
v/s.		
Tharwani Infrastructures	]	
Sheet No.34, Near Hanuman Mandir,	]	
Kalyan Ambarnath Road, Opp: Thambi	]	
Garage, Ulhasnagar 421 003.	]	.. Respondents.

WITH

**APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO.497 OF 2024**

M/s. Tharwani Infrastructures	]	
A Proprietorship Concern	]	
Sheet No.34, Near Hanuman Mandir,	]	
Kalyan Ambarnath Road, Opp: Thambi	]	
Garage, Ulhasnagar 421 003.	]	.. Petitioner

v/s.

- | | | | |
|---|--|---|--|
| 1 | Commissioner of CGST & Central |] | |
| | Excise, Thane Rural |] | |
| | 4 th Floor, GST Bhavan, Plot No.24-C |] | |
| | Sector-E, Bandra Kurla Complex, |] | |
| | Bandra (East),Mumbai 400 051. |] | |
| 2 | Assistant Commissioner CGST & Central |] | |
| | Excise, Division 1, Thane Rural, |] | |
| | 1 st Floor, Aricia Altis, Besides APMC, |] | |
| | Market, Bhoiwada, Kalyan West 421 301. |] | |
| 3 | Superintendent, Division -1, Range-5, |] | |
| | 1 st Floor, Aricia Altis, Besides APMC, |] | |
| | Market, Kalyan Shill Road, |] | |

	Bailbazar, Kalyan West 421 301.	]	
4	Union of India	]	
	through its Finance Secretary	]	
	Department of Revenue,	]	
	Ministry of Finance, 3 rd Floor, Jeevan	]	
	Deep Building, Sansad Marg,	]	
	New Delhi 110 001.	]	.. Respondents.

Mr. Pradeep S. Jetly, Sr. Advocate with Mr. Sham Walve, Ms. Chandni Tanna and Mr. Prathamesh Chavan i/b. India Law Alliance, for the Petitioner.
Ms. Neeta Masurkar with Mr. Ram Ochani, for the Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 8th MARCH, 2024

ORAL JUDGMENT (Per G. S. KULKARNI, J.):

This Appeal by the Revenue, under Section 35-J of the Central Excise Act, 1944 (the 'Act') is directed against an Order dated 22nd June, 2023 passed by the Customs, Excise and Service Tax Appellate Tribunal (the 'Tribunal'), Mumbai Bench, whereby Central Excise Appeal No. ST/86016 of 2018 filed by the Respondent against Order-in-Original dated 15th December, 2017, stands allowed.

2 The Revenue has urged the following substantial questions of law for consideration of this Court:-

“(a) Whether under the facts and circumstances of the case and in law, the CESTAT was correct in holding that intention to evade service tax is absent in the present case?”

“(b) Whether under the facts and circumstances of the case and in law, the CESTAT was correct in setting aside at invocation of extended period of limitation for issue of Show Cause Notice

under proviso to sub-section (1) of Section 73 of Finance Act, 1994?

(c) Whether under the facts and circumstances of the case and in law, the CESTAT was correct in applicability of sub-section (3) of Section 73 of Finance Act, 1994 without appreciating Section 73(4) of the Finance Act, 1994?

(d) Whether under the facts and circumstances of the case and in law, the CESTAT was correct in setting aside the penalties levied under Section 77 & 78 of the Finance Act, 1994?

(e) Whether under the facts and circumstances of the case and in law, the CESTAT was correct in not following its own decision in the case of Master Marine Services P. Limited reported at 2014(35) STR 79 (Tri. Mumbai)?”

3 Briefly, the facts are:-

The Respondent is engaged in providing service taxable under the category of “*construction of complex service*”, which had become taxable w.e.f. 1st July, 2010. It is not in dispute that, immediately thereafter, proceedings filed before this Court in ***Maharashtra Chamber of Housing Industry v/s. Union of India***¹, assailing such tax. On such proceedings, this Court by its Judgement and Order dated 19th January, 2012, upheld the levy and collection of tax on the said services. However, during pendency of the proceedings, which was between the year 2010 to 19th January, 2012, this Court had passed an Order directing the Respondent to keep any coercive action in abeyance.

4 After the decision of this Court in Maharashtra Chamber of Housing Industry (supra), on 24th January 2012, the Anti Evasion Unit (Service Tax) issued summons to the Respondent directing it to submit certain documents. Thereafter, another summons for a similar purpose was issued on 13th February, 2012.

5 On such backdrop, the Respondent on 17th February, 2012, obtained a Registration with the Service Tax Department. Respondent also paid self assessed service tax dues along with interest, the details of which are on record in the form of a Statement (page 44). The period in question is from 2010-11 to 2015-16 wherein, in the respective financial years as set out in the table, a total amount of Rs. 7,07,02,774/- came to be deposited by the Respondent towards service tax.

6 On 27th April, 2017, the Revenue issued a show cause notice to the Respondent, invoking the extended period of limitation under the proviso of Section 73 (1) of the Finance Act, 1994. Such show cause notice, *inter alia*, alleged that the Respondent had failed to file proper ST-3 returns and had suppressed material facts, thus making itself liable for penalty under Section 78 of the Finance Act, 1994. The relevant extract of the show cause notice reads as under:-

“

It was only after the initiation of the enquiry by the Anti -Evasion, the fact of non-registration and non-payment of service tax was revealed and it was only then the noticee had taken the service tax registration and started discharging service tax liability. From this act of noticee, it is apparent that, had the service tax enquiry not been initiated, the noticee would have never taken the service tax registration and would have continued to evade the service tax, causing a grave loss to the Government exchequer. They also failed to file proper ST-3 returns and suppressed the material facts, thus making themselves liable for penalty under Section 78 of the Finance Act , 1994 in as much as they have:

(a) suppressed the above stated facts with malafide intention to evade payment of Service Tax as they:

(i) were aware that Service Tax is payable on the taxable services provided by them during the period 2010-11 to 2015-16 but failed to determine the taxable value correctly and consequently failed to

pay appropriate Service Tax thereon as required under Section 67 of the Finance Act, 1994;

(ii) failed to take registration after imposition of Service Tax on Construction Services i.e. after 01.07.2010 and continued to provide the Taxable Service without obtaining Service Tax Registration. Thus, they have suppressed the fact from the Department and liable for penalty under Section 78 of the Finance Act, 1994;

(iii) failed to file the ST-3 returns for the period 2010-11 to 2015-16 within the time specified under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994;

(iv) had intentionally suppressed the taxable value of services by not filing their ST-3 returns pertaining to the period 2010-11 to 2015-16 in time and it was only after the initiation of the enquiry, the noticee filed the ST3 returns but had short-declared their taxable value in their ST3 Returns. It was only after thorough investigation, the noticee declared their correct taxable value to the department.”

... ..

11:- Now, therefore, M/s. Tharwani Infrastructures are required to show cause within 30 days of receipt of this notice to the Commissioner, Service Tax, Mumbai VII, having his office at 16th Floor, Satra Plaza, Sector 19D, Palm Beach, Vashi, Navi Mumbai 400 705, as to why:

(a) Service Tax amounting to Rs.7,07,02,774/- (Rupees Seven Crores Seven lakhs Two Thousand Seven Hundred and Seventy Four only) for the period from 01.07.2010 to 31.03.2016 inclusive of Education Cess and Secondary & Higher Education Cess as detailed in Annexure “A”, should not be demanded and recovered in respect of taxable services provided and in terms of the proviso of Section 73(1) as amended of the Finance Act, 1994.

(b) Service Tax amounting to Rs.7,07,02,774/- (Rupees Seven Crores Seven Lakhs Two Thousand Seven Hundred and Seventy Four only) paid should not be appropriated against the duty liability as 11(a) above;

(c) Interest at appropriate rate and as applicable in force should not be demanded and recovered from them under Section 75 of

the Finance Act, 1994, on Service Tax that would be determined to be payable by them as per 10(a) above;

(d) Penalty/ Late fee should not be imposed on them for not filing/ late filing of ST-3 returns under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994;

(e) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994 as amended for their failure to furnish information called by an officer in accordance with the provisions of the Finance Act, 1994 or Rules made there under;

(f) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 as amended for suppressing the facts from the department by concealing taxable value with malafide intention to evade payment of Service Tax.”

7 The Respondent replied to the show cause notice being reply dated 7th November, 2017 *inter alia*, contending that the show cause notice was bad-in-law and untenable and that there was no ground, whatsoever, to invoke the extended period of limitation.

8 The Commissioner, after granting an opportunity of hearing to the Respondent, adjudicated the show cause notice, by an Order-in-Original dated 15th December, 2017, whereby the amount of tax already deposited by the Respondent of Rs.7,07,02,774/- was confirmed and was directed to be appropriated and penalty was imposed in terms of operative paragraphs 4, 5 and 6 of the Order-in-Original which read thus:-

“4:- I impose Penalty/Late fee of Rs.1,45,700/- (as worked out in the table of Para 18 above) on M/s. Tharwani Infrastructures for not filing/ late filing of ST-3 returns under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994;

5:- I impose penalty of Rs.10,000/- on M/s. Tharwani Infrastructures under Section 77 of the Finance Act, 1994 as amended for their failure to furnish information as and when called by the Central Excise officer in accordance with the

*provisions of the Finance Act, 1994 or Rules made thereunder;
and*

6:- I impose penalty of Rs.7,07,02,774/- (Rupees Seven Crore Seven Lakh Two Thousand Seven Hundred and Seventy Four only) on M/s. Tharwani Infrastructures under Section 78 of the Finance Act, 1994 as amended on the grounds as discussed herein above. Provided that where Service Tax and Interest, as determined at I. and III above, is paid by the noticee M/s. Tharwani Infrastructures within a period of thirty days from the date of communication of this order, the penalty payable shall be, twenty-five per cent of the service tax so determined i.e. twenty-five per cent of Rs.7,07,02,774/- (Rupees Seven Crore Seven Lakh Two Thousand Seven Hundred and Seventy Four only). Provided further that the benefit of the aforesaid reduced penalty shall be available only if the amount of such reduced penalty is also paid within such period.”

9 The Respondent, being aggrieved by the Order-in-Original, approached the Tribunal in the proceedings of the Appeal in question, which has been allowed by the impugned order. The Tribunal, while allowing the appeal of the Respondent has, *inter alia*, held that the Respondent had paid the entire service tax as ascertained by the Assessing Officer before issuance of a show cause notice, as also the Respondent paid the interest amount before issuance of the show cause notice. Hence, considering the provisions of sub-section (3) of Section 73 of the Finance Act, 1994, which provide that, if the service tax provider, on the basis of its own ascertainment, pays service tax before issuance of show cause notice, the Department cannot issue a show cause notice. It was observed that the extended period could be invoked, *inter alia*, if the non-payment of service tax was on account of fraud, collusion, wilful misstatement, suppression of fact or contravention of any provisions of Chapter V of the Finance Act, 1994, or the rules made thereunder, with intention to evade payment of duty. The Tribunal observed that, in the present case, Revenue had invoked the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 for raising demand for the extended period from

1st July, 2010 to 31st March, 2015 and the show cause notice in question was issued on 27th April, 2017, and hence such invocation was not appropriate, for the reason that the Respondent had paid the entire service tax before issuance of the show cause notice, which showed that there was no intention to evade the service tax. For such reason, the Tribunal held that there was no case for issuance of show cause notice, as also, no occasion to propose imposition of penalty and, accordingly, set aside the order-in-original against the Department.

10 Ms. Masurkar, learned Counsel for the Revenue, in support of the Appeal, has limited submissions. Her submissions are not different from what was urged in the adjudication of the show cause notice, and as to what was observed by the Commissioner in passing the Order-in-Original, namely that the conduct of the Respondent in the present case amounted to suppression of material facts, as it was only after the department issued several summons, the Respondent came forward to make payment of tax and interest, failing which, the Respondent would not have ever discharged its tax liability. It is, hence, her contention that what was set out in the show cause notice with regard to the Respondent's suppressing material facts, clearly entitled the Revenue to invoke the extended period under the proviso to sub-section (1) of Section 73 of the Finance Act. It is submitted that sub-section (4) of Section 73 of the Act is an exception to sub-section (3) which would be independently applicable in the event, when any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded for the reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of Chapter V of the Finance Act, 1994 as set out in sub-section (4) of the Act. It is, hence, her contention that, what has been observed by the Tribunal that once the Respondent had paid tax, as also the interest, before issuance of the show cause notice, the department

could not have issued the show cause notice invoking the extended period, ought not to be an acceptable proposition. It is her submission that the extended period under the proviso to sub-section (1) of Section 73 read with sub-section (4) was clearly attracted, hence on such count the impugned order passed by the Tribunal deserves to be set aside.

11 On the other hand, Mr. Jetly, the learned Senior Counsel for the Respondent in supporting the impugned order would submit that there is no error or illegality in the observations as made by the Tribunal in applying the proviso to sub-section (1) of Section 73 as also reaching to the conclusion, that this was not a case, where the extended period could be invoked by issuing show cause notice, as the Respondent's case clearly fell within the provisions of sub-section (3) of Section 73, as the tax as also the interest was paid by the Respondent prior to the issuance of the show cause notice. It is Mr. Jetly's submission that, on a plain reading of the show cause notice, it was clear that no case of suppression of material facts was made out, and, hence, no question of law, much less any substantial question of law, as urged on behalf of the Revenue, would fall for the consideration of the Court in the present appeal.

12 Having heard the learned Counsel for the parties and having perused the documents on record, we are not persuaded to accept the contentions as urged on behalf of the Revenue, for the reasons, we discuss hereunder.

13 It clearly appears to be not in dispute that the uncertainty on the taxability of the service in question, namely "*construction of complex service*", stood clarified by the decision of the Division Bench of this Court in Maharashtra Chamber of Housing Industry (*supra*). The Respondent, although, after issuance of summons, applied for obtaining registration which

was admittedly prior to the issuance of the show cause notice which is dated 27th April, 2017, issued for the period 2010-11 to 2015-16.

14 For appreciating the rival contentions in the present facts and circumstances, we may observe that the effect which is brought about by sub-section (3) of Section 73 of the Finance Act, 1994 would be required to be considered. It would be necessary to note the provisions of sub-sections (1), (3) and (4) of Section 73 of the Finance Act, 1994, which reads thus:-

“73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded

(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within [thirty months] from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-

- (a) fraud; or***
- (b) collusion; or***
- (c) wilful mis-statement; or***
- (d) suppression of facts; or***
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,***

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have

effect, as if, for the words [thirty months], the words “five years” had been substituted.

Explanation: Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of [thirty months] or five years, as the case may be.

[(1A) Notwithstanding anything contained in sub-section (1) (except the period of [thirty months] or serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are mentioned in the earlier notices]

[(1B) Notwithstanding anything contained in sub-section (1), in a case where the amount of service tax payable, has been self-assessed in the return furnished under sub-section (1) of section 70, but not paid either in full or in part, the same shall be recovered along with interest thereon in any of the modes specified in section 87, without service of notice under sub-section (1)]

(2) The [Central Excise Officer] shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount of specified in the notice) and thereupon such person shall pay the amount so determined.

(xxx)

[(2A) Where any appellate authority or tribunal or court concludes that the notice issued

under the proviso to sub-section (1) is not sustainable for the reason that the charge of,-

- (a) fraud; or*
- (b) collusion; or*
- (c) wilful misstatement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax,*

has not been established against the person chargeable with the service tax, to whom the notice was issued, the Central Excise Officer shall determine the service tax payable by such person for the period of [thirty months], as if the notice was issued for the offences for which limitation of [thirty months] applies under sub-section (1).]

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the [Central Excise Officer] of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid.

PROVIDED that the [Central Excise Officer] may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the [Central Excise Officer] shall proceed to recover such amount in the manner specified in this section, and the period of [thirty months] referred to

in sub-section (1) shall be counted from the date of receipt of such information of payment.

[Explanation 1: For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the [Central Excise Officer] but for this sub-section.

[Explanation 2: For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service-tax under this sub-section and interest thereon].

(4) Nothing contained in sub-section (3) shall apply to a case-where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-

- (a) fraud; or*
- (b) collusion; or*
- (c) wilful mis-statement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.*

[(4B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2)-

- (a) within six months from the date of notice where it is possible to do so, in respect of cases [falling under] sub-section (1);*
- (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the provision to sub-section (1) or the proviso to sub-section (4A);]*

(5) *The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.*

(6) *For the purposes of this section, “relevant date” means-*

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid-

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter, or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund].”

15 No doubt that the proviso below sub-section (1) would authorize the Revenue to invoke the extended period in case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion, wilful misstatement or suppression of facts or contravention of any of the provisions of Chapter V or the rules made thereunder with intent to evade payment of service tax. However, what is imperative to be noted, is that the ingredients of sub-sections (a) to (e) of sub-

section (4) are qualified by the condition that the assessee had an intention to evade payment of service tax.

16 Now, coming to the provisions of sub-section (3) of Section 73 of the Act, is a provision which confers/ grants an opportunity to the assessee to pay the amount of service tax chargeable on the basis of his own ascertainment, or on the basis of tax ascertained by the Department, before service of notice on the assessee under sub-section (1) of Section 73, in respect of such service tax and, thereafter, inform the concerned Officer of such payment in writing, who, on receipt of such information “*shall not issue*” any notice under sub-section (1) of Section 73 in respect of the the amount so paid. Hence, if the amount of tax is paid in the manner as recognized by sub-section (3), necessarily the designated officer is under a mandate not to serve any notice under sub-section (1) in respect of the amount so paid.

17 In the context of sub-section (3), if sub-section (4) is to be seen, it is an exception to sub-section (3) when it begins with the words “*nothing contained in sub-section (3) shall apply*” to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of Chapter V or of the rules made thereunder with intent to evade payment of service tax.

18 Thus, applying such provisions to the facts of the present case, it is clear that there was no intention on the part of the Respondent to evade payment of service tax. By evasion, it would be meant that the assessee was eluding and avoiding to pay tax by trickery. The intention of the Respondent in the present case was not to escape or to have an intention to default in payment of taxes so as to defeat the rigorous of the taxing provisions. The basic premise in regard to the applicability of the different ingredients namely

– fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of the said Chapter or of the rules made thereunder, with intent to evade payment of service tax. It would be appropriate to note the jurisprudential understanding of the concept of evasion. The learned author P Ramanatha Aiyar in the celebrated work “Advance Law Lexicon” (Third Edition) would describe evasion as follows:-

“Evasion:-The act of escaping by means of artifice; a trick or subterfuge; a subtle endeavoring to set aside truth, or to escape the punishment of the Law. (Tomlin) ‘Evade’ is capable of being used in two senses :(1) which suggests underhand dealing, (2) which means nothing more than the intentional avoidance of something, disagreeable (Simms v. Registrar of Probates, 6 LJPC, 56)

....

19 In *Tamilnadu Housing Board v/s. Collector of Central Excise, Madras and Another*², the Supreme Court has held that the word “evade” in the context of the Central Excise law would mean defeating the provisions of law of paying duty.

20 Thus, evasion is one of the basic requirements for applicability of the extended period under the proviso to sub-section (1) and also in regard to applicability of sub-section (4) of Section 73 of the Finance Act, 1994.

21 It is not in doubt that Respondent, much prior to the issuance of the show cause notice, paid the service tax as also the interest thereon as already noted by us. If this be the case, certainly, the designated officer was not correct in issuing a show cause notice to pass the Order-in-Original. It has been rightly interfered by the Tribunal observing that the department was not justified in invoking the extended period in the present case, and, more

² (1995) Supp. 1 SCC 50

particularly, when the entire service tax as also the interest was paid prior to the issuance of the show cause notice, clearly indicating that there was no intention of the Respondent to evade payment of service tax.

22 We are, hence, completely in agreement with the conclusions of the Tribunal. We find no merit in the Appeal.

23 Appeal is accordingly, rejected. No costs.

Writ Petition No.497 of 2024

24 This Writ Petition is filed by the Assessee/ the Respondent in the aforesaid Central Excise Appeal as decided by the above judgement. By this Writ Petition, the Assessee has prayed for the following reliefs:-

“(a):- Issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, Order of Direction calling for the records and proceedings dealing with failure on the part of Respondent No.1 to decide upon the Refund Application dated 10th July, 2023 filed by the Petitioner;

(b):- Issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order of Direction directing Respondent No.1, their servants and subordinates to decide upon the Refund Application dated 10th July, 2023 filed by the Petitioner and process/ issue the refund due to the Petitioner along with the consequential benefits including refund/ adjustment of taxes/interest paid in excess as well as refund of penalty set aside subsequent to the Final Order No. 85986/2023 dated 22nd June, 2023 passed by the Hon’ble CESTAT, in a time bound manner, preferably within two weeks.”

25 In view of the dismissal of Revenue’s appeal by our judgement on the Revenue’s appeal (supra), in our opinion, the refund Application as filed

by the Petitioner, dated 10th July, 2023, is required to be considered and appropriate orders on the same need to be passed in accordance with law.

26 We, accordingly, direct the designated officer of the Respondent-Department to consider the said application of the Petitioner as expeditiously as possible and pass appropriate orders within a period of six weeks from the date a copy of this order is available and in accordance with law.

27 All contentions of parties are kept open.

28 Writ Petition disposed of in the aforesaid terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)