**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO.**

**Appeal No. ST/85856/2015**

(Arising out of Order-in-Original No.01/ST/2015 dt.15.1.2015 passed by the Commissioner of Central Excise, Customs, & S.Tax, Nashik-I )

**Hindustan Aeronautics Ltd.** : **Appellant**

**VS**

**Commissioner of Central Excise, Nashik-I** : **Respondent**

**Appearance**

None for Appellant

Shri Dilip Shinde, Asstt. Commr. (A.R) for respondent

**CORAM:**

**Hon'ble Dr. D.M. Misra, Member (Judicial)**
**Hon'ble Mr. C.J. Mathew, Member (Technical)**

**Date of hearing : 1/11/2018**
**Date of decision : 1/11/2018**

**ORDER NO. A/87879/2018**

***Per : Dr. D.M. Misra***

None present for the appellant. Heard Ld. AR for the Revenue.

2. The matter has been listed on 14.2.2018, 21.3.2018, 7.5.2018, 12.6.2018, 13.7.2018, 21.8.2018 3.10.2018 and today i.e. 1.11.2018. On all these occasions no one was present for the appellant nor any request for the adjournment.

3. Ld. AR for the Revenue submits that further adjournment would not serve any purpose. Consequently the appeal is taken up for disposal.

4. Ld. AR for the Revenue submits that the issue involved in the present appeal relates to whether the appellant are allowed to deduct the cost of material used in repair and maintenance of aircraft of Indian Air Force, Ministry of Defence. He submits that no evidence was placed before the adjudicating authority giving details of the parts and its value that had gone into the repairs and maintenance of Aircraft Engines of Indian Air force. He submits that on similar issue considering the arrangement between the Ministry of Defence and various State Governments regarding discharge of Sales Tax/VAT; this Tribunal remanded the matter in appellant's own case for the factory situated at Sunabedha in Odisa State. In support he referred to the judgment of this Tribunal in the case of M/s. Hindustan Aeronautics Ltd. Vs. Commissioner of Central Excise and Service Tax- BBSR-I 2015-TIOL-1118-CESTAT-KOL.

5. We find force in the contention of the Ld. AR for the Revenue, this Tribunal considered similar issue in the appellant's own for their other Unit at Odisa. In paragraph 5 of the order, it is observed as follows:

> "*5. Heard both sides and perused the record. We find that undisputedly the benefit of Notification No.12/2003-ST dated 20.6.2003 had been denied to the Appellant while computing the Service Tax liability for rendering services under the category of "management, maintenance or repair*

*service" during the period involved in the aforesaid appeals. We find that initially the claim of the appellant was that the supply of materials along with services involved 'deemed sale', hence the benefit of Notification 12/2003 ST dt. 20.06.2003 was admissible to them; the said claim was however not accepted by the Revenue in absence of actual sale of the goods supplied. On the aspect of liability of the sales tax/ VAT on the goods supplied by the Appellant, the matter went up to Hon'ble Supreme Court and after the intervention of the Hon'ble Supreme Court, the disputed parties, namely the appellant and the respective state governments had settled the issue. The ld. C.A. placed before us the copy of the settlement order dated 25.10.2014 passed by the Commissioner of Commercial Taxes, Odisha and submitted that pursuant to the said settlement, the Appellant had paid sales tax/VAT on the supplied material. In view of these developments, we are of the view that it is prudent to remit the case to the adjudicating authority for deciding the issue of abatement of value of the materials supplied and applicability of Notification No.12/2003-ST dated 20.6.2003 afresh. Consequently, the impugned orders are set aside and the matter is remitted to the ld. adjudicating authority for deciding the issues afresh taking into consideration the claim of the appellant about discharge of sales tax/VAT and arrive at a finding on the eligibility of Notification No.12/2003-ST dated 20.6.2003. Needless to mention a reasonable opportunity of hearing be granted to the Appellant. Both sides are at liberty to produce necessary evidences in their favour. All issues are kept open. Appeals are thus allowed by way of remand."*

Following the said observation, we also remand the matter to the adjudicating authority to consider the eligibility of Notification

No.12/2003-ST dt. 20.6.2003 afresh after taking into consideration the findings given in the aforesaid judgment and the evidence that would be produced by the appellant in support of their case. All issues are open. Appeal is allowed by way of remand.

(Operative portion of the order pronounced and dictated in court )

***(C.J. Mathew)***
***Member (Technical)***

***(Dr. D.M. Misra)***
***Member (Judicial)***

*SM.*