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

CENTRAL EXCISE APPEAL NO. 212 OF 2014

Raymond Limited	}	**Appellant**
versus		
The Commissioner, Central Excise and Customs, Nashik	}	**Respondent**

Mr. V. Sridharan-Senior Advocate with Mr.Prakash Shah, Mr. Jas Sanghavi i/b. M/s. PDS Legal for the Appellant.

Mr. P. S. Jetly for the Respondent.

CORAM :- S.C.DHARMADHIKARI & S.P.DESHMUKH, JJ.
DATED :- JANUARY 5, 2015

P.C. :-

This Appeal by the Assessee challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The Tribunal, by the impugned order delivered on 20th March, 2014 and communicated to the Appellant on 5th April, 2014, set aside the order passed by the Commissioner of Central Excise and Customs (Appeals), Nashik. The Revenue's Appeals bearing Nos. E/2740 and 2741 of 2004 have been allowed.

2) Mr. Sridharan - Senior Counsel appearing for the Assessee submits that the questions of law formulated by the Assessee at page 12 of this paper book are substantial questions of law.

3) In relation to that, he would submit that the Tribunal was not justified in holding that there was no evidence laid by the Assessee to indicate that it had reversed the credit in respect of duty paid on inputs on which credit has been taken which was used in the manufacture of exempted final products for the whole period. Mr.Sridharan would take us through the order passed by the Tribunal to indicate that on this point there was no dispute. Neither the Revenue, nor the authorities had disputed the fact that there was a Notification No. 67 of 1995, which came to be amended in the year 2001. The benefit of this Notification was taken. The finding of fact by the Appellate Authority is that this Notification is capable of being substantially complied with. Upon such a finding of the Appellate Authority in the Revenue's Appeal, the Tribunal has, by holding that there was no material to indicate that the Assessee fulfilled the condition of non availment of CENVAT credit on the inputs used in the manufacture of captively consumed yarn, taken the Assessee by complete surprise. Mr. Sridharan assails the finding at para 5.1 of the impugned order.

4) Even in relation to second point, namely the power under section 11B of the Central Excise Act, 1944, Mr. Sridharan submits that the finding in para 5.2 of the impugned order would indicate that the

Tribunal relied upon the Judgment of the Hon'ble Supreme Court in the case of *Mafatlal Industries Ltd. vs. Union of India* **(1997) 89 ELT 247 (SC)**, which has been rendered on the constitutionality of the provision, namely section 11B itself. However, while sustaining the validity of the provision, the Hon'ble Supreme Court has referred to the fact that ordinarily a manufacturer will not sell his product at less than the cost price plus duty. By this process, he would not survive in the business. However, according to Mr. Sridharan, in the present case, it is the intermediate product. The intermediate product is yarn of wool, which is used in manufacture of woollen shawl. Therefore, whether in the price of the woollen shawl the component is included and if included to such an extent as would cover the cost plus profit, then, possibly, such a finding could have been rendered. However, when apart from the Chartered Accountant's certificate, there were materials on record to support the finding of the Appellate Authority, then, the Tribunal should have given an opportunity to the Assessee to rely upon the same. Mr.Sridharan Therefore submits that the adjudication by the Tribunal is unsatisfactory and incomplete.

5) Mr. Jetly appearing for the Revenue would submit that on both counts the Assessee is not taken by surprise. The Assessee appeared before the Adjudicating Authority. The order-in-original refers

to both controversies. Similarly, the materials before the Appellate Authority were referred to by the Tribunal. During the course of arguments and as noted by the Tribunal in respect of the reversal of the credit on the duty paid on inputs of which credit has been taken, the Assessee could not produce any material. Even in relation to the bar contemplated and the unjust enrichment aspect beyond the Chartered Accountant's certificate, there was no material before the Appellate Authority. In such circumstances, the Tribunal's findings as relied upon by Mr. Jetly are not perverse for the Assessee being given no opportunity to produce or rely on the factual materials. The Appeal is therefore not raising any substantial question of law. It deserves to be dismissed according to Mr. Jetly.

6) With the assistance of the learned Counsel, we have perused the Appeal paper book and the Annexures, including the orders of the Tribunal and the Commissioner. The Commissioner had before him the Appeals, which were filed by the Assessee Raymond Limited. The Commissioner in dealing with the Appeals of the Assessee, passed an order, copy of which is annexed to this Appeal paper book. That order has been delivered in the Appeals, under which, refund claims of Rs.9,90,585/-, Rs.34,68,178/- and Rs.76,61,460/- were respectively rejected by the Assistant Commissioner. Upon noticing the admitted

factual position, including the Notification, the Commissioner referred to the grounds and the arguments before him. As regards the Commissioner's findings and which are rendered against the Assessee, there is no dispute, because no cross Appeals were filed.

7) Therefore para 8 of the Commissioner's (Appeals) order need not be referred and in further details. From para 9 onwards, the arguments in relation to the aforenoted two questions have been considered. Upon consideration, the Commissioner concluded that the duty is paid on intermediate product used in the manufacture of exempted final products. The concept of unjust enrichment would be applicable. However, the Commissioner referred to the stand of the Assessee. He also referred in para 12 to copies of the financial statements for the year 2001-02 and 2002-03. The Commissioner also referred to financial statements dated 25th May, 2004, under which the Assessee furnished certificates issued by the Chartered Accountant, in which cost of production of exempted final products have been indicated and for the years 2001-02 and 2002-03. They have been certified. Similarly, the Assessee also filed a statement showing composite sale prices of exempted final products prevailing during the period before dispute, during the period of dispute and after the period of dispute. The sale invoices were also produced.

8) It is relying upon such material that the Commissioner concluded that the Assessee could not be denied the benefit and there is no case of unjust enrichment. The Commissioner has referred to several decisions of the Hon'ble Supreme Court delivered post *Mafatlal Industries Ltd.* (supra). He has also referred to certain orders passed by the Tribunal's Benches at Mumbai, Kolkata and Chennai. In these circumstances, he allowed the Assessee's Appeals.

9) Even in relation to the first question, what the Commissioner (Appeals) held is that the compliance with the Notification has been made and substantially. How that substantial compliance has been made is noted in para 10 of his order.

10) The Revenue was in Appeal before the Tribunal against the said findings. We are of the view that the Tribunal in paras 5.1 and 5.2 of the impugned order was required to refer to all the materials before the Commissioner and in complete details. Even if the Appeals were to be allowed, the Commissioner's findings should have been dealt with extensively to arrive at a conclusion as to whether they can be said to be perverse or vitiated by error of law apparent on the face of the record. We do not find that in relation to the first aspect, namely whether credit was reversed even at the time of filing of refund claim in August, 2002, there was no issue raised and seriously before the Tribunal. Even if the

record submitted by the Assessee before the Adjudicating Authority revealed that the Assessee claimed that they have reversed an amount of Rs.3,12,569/- in respect of the manufacture of exempted products during the period November, 2001 to June, 2002 but the refund claim covered larger period, still, the Tribunal was required to deal with the materials and which have been referred by the Commissioner in this regard. We do not find any such reference being made to the same. Similarly, with regard to unjust enrichment, in para 5.2, the Tribunal rendered a finding that except for the costing statement of the product, there is no evidence to indicate that the incidence of duty has been borne by the Assessee. However, we do not find any reference being made to the findings of the Commissioner in that regard and the materials before him.

11) We are in agreement with Mr. Sridharan that such disposal of the Appeals is most unsatisfactory. The present Appeal is therefore admitted on the following two substantial questions of law:

> (a) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in holding that no evidence has been led by the Appellant that it had reversed the credit in respect of duty paid on inputs on which credit has been taken which was used in the manufacture of exempted final products for the whole period, when no such dispute was raised by the Adjudicating Authority?
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> (b) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in holding that the Appellant has not discharged the statutory obligation cast on it of providing that

incidence of duty paid on the yarn was not passed on to buyers of the final products?

12) In the light of the above referred material, namely the arguments of both sides, the findings of the Commissioner and the documents referred by him, we are of the opinion that keeping this Appeal pending in this Court would serve no useful purpose. The Tribunal having not dealt with the matter satisfactorily and while rendering the conclusions against the Assessee, having failed to note the Commissioner's findings that we are of the view that the impugned order deserves to be quashed and set aside. In order to give complete opportunity to both sides and to rely on the materials before the Commissioner and assail them or support them totally, interest of justice would be served if we restore the Revenue's Appeals, on which the impugned order has been passed, to the file of the Tribunal, for being dealt with afresh on their own merits and in accordance with law. Beyond referring to the rival contentions and in somewhat details and to impress upon the Tribunal that no shortcuts can ever be used to dispose of the Appeals and without giving satisfactory reasons, that we have passed a long order. However, our order and any of the observations shall not be taken as expression of final opinion on the rival contentions. Each one of them are kept open for being dealt with in terms of our order of restoration of the Appeals to the file of the

Tribunal. The Tribunal shall render a fresh conclusion by passing a complete order, uninfluenced by any of its earlier observations and findings. The Appeal is accordingly allowed. No costs.

(S.P.DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**