IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.8.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.Nos.2362 to 2364 of 2008

M/s.Fenner India Ltd.,
3, Madurai Melakkal Road,
Kochadai, Madurai 625 016.
rep. by Senior Vice President
(Technology & Development) V.Abraham ... Appellant in all Petitions

Vs.

1. Customs, Excise & Service Tax
   Appellate Tribunal,
   Shastri Bhavan Annex,
   No.26, Haddows Road,
   Chennai 600 006.

2. Commissioner of Central Excise (Appeals),
   Lalbahadur Shastri Marg,
   Central Revenue Building,
   Madurai 625 002.

3. Asst. Commissioner of Central Excise,
   Madurai II Division,
   No.8, V.P.Ratnasamy Nadar Road,
   BIBI Kulam, Madurai 625 002.

4. Commissioner of Central Excise,
   Lalbahadur Shastri Marg,
   Central Revenue Building,
   Madurai 625 002. ... Respondents in all Petitions

Civil Miscellaneous Appeals against the final order Nos.1265 to 1267 of 2007 dated 12.10.2007 in Appeal Nos.E/506 to 508 of 2003 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant : Mr.Raghavan Ramabadran

For Respondents : Mr.Vikram Ramakrishnan

COMMON JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J. )

These appeals, filed under section 35G of the Central Excise Act, 1944, arise out of final orders passed by the CESTAT in a batch of three appeals.

2. Heard Mr.Raghavan Ramabadran, learned counsel for the appellant.

3. The appellant is a manufacturer of excisable goods falling under Chapter 40 of CETA, 1985. The excisable goods manufactured by the appellant are assessable to duty on ad valorem basis. Therefore, the value for payment of duty has to be arrived at in terms of section 4, after taking note of abatements for various discounts.

4. The appellant lodged three refund claims under section 11B of the Central Excise Act, 1944. The refund claims arose on account of the fact that at the time of removal of excisable goods, the appellant had only deducted the trade discounts and cash deposits and that particulars of certain other discounts such as turnover discount, monthly consistency incentive and additional discount for which discounts were not available at that time.

5. Further, the refund claims made by the appellant were rejected by all the authorities, forcing the appellant to come up with the above appeals.

6. Unfortunately for the appellant, they could not produce either before all the authorities or even before this court, proof to show that the benefit was passed on to the end users, viz., customers. Therefore, the very same issue as against the very same assessee was answered by this court in 2014 (305) ELT 524 against the very same appellant herein. Therefore, these appeals are also liable to be

dismissed. We are in respectful agreement with the ratio laid down in the decision reported in 2014 (305) ELT 524, since the appellant could not produce the credit notes at any point of time until now. Accordingly, the civil miscellaneous appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. Customs, Excise & Service Tax
   Appellate Tribunal,
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   Madurai 625 002.

+3cc's to M/s.Lakshmi Kumaran, Advocate, S.R.No.46094



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PUR(CO)
CA(12/10/2015)