

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.E.A.NO.78 of 2010

JUDGMENT: (per SK,J)

This appeal by the Revenue under Section 35(G) of the Central Excise Act, 1944, seeks to raise the following substantial questions of law:

(i) Whether Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, is justified in relying on judgment of Rajasthan High Court reported in AK Spintex Limited when facts are different in that case?

(ii) Whether Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, can grant the relief of refund by ignoring the presumption of passing of incidence of duty under Section 12B of the Central Excise Act, 1944?

(iii) Whether Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, can grant refund without applying the principle of unjust enrichment by ignoring judgment of Apex Court in Mafatlal Industries [1997 (89) ELT 247 (SC)] and Sahakari Khand Udyog Mandal Limited [2005 (181) ELT 328 (SC)]?

We are however informed by the learned counsel appearing for the parties that the issues sought to be raised by the Revenue in the present appeal stand covered by the decision of this Court in C.E.A.Nos.24, 25, 30, 39, 75 & 328 of 2010, which was followed thereafter in C.E.A.No.79 of 2010. Copies of the common judgment dated 08.12.2017 passed in the earlier batch of cases and the judgment dated 31.01.2018 passed in C.E.A.No.79 of 2010 are placed on record.

For reasons alike as were mentioned in the aforestated common judgment dated 08.12.2017 and in terms thereof, the order under appeal presently is set aside and the matter is remitted to the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, to consider as to whether the respondent-assessee passed on the burden of duty to the buyer, which term shall not be restricted to the first buyer

alone but shall also extend to the ultimate customer as held by the Constitution Bench of the Supreme Court in *Mafatlal Industries Limited v. Union of India*¹. The Tribunal shall decide the said issue after issuance of notice to both parties and hearing them.

The appeal is accordingly allowed leaving the substantial questions of law raised unanswered in the circumstances.

Pending miscellaneous petitions, if any, shall stand disposed of in the light of this final order. No order as to costs.

SANJAY KUMAR,J

D.V.S.S.SOMAYAJULU,J

Date:15.03.2018

GJ



¹ 1997 (89) ELT 247 (SC)