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HIGH COURT OF CHHATTISGARH, BILASPUR

TAX Case No. 61 of 2017

(Arising out of order dated 25.08.2015 in Excise Appeal No. E/619/2010 EX.[SM] of the learned CESTAT)

Commissioner, Central Excise, Customs & Service Tax Raipur, Chhattisgarh

---- **Appellant**

Versus

M/s Ganesh Bakers Pvt. Ltd. Village Kachna, Amaseoni Road, P. O. Mandher (GSITI), Raipur, Chhattisgarh

---- **Respondent**

For Appellant : Shri Vinay Pandey, Advocate
For Respondent : Shri Jatin Mahajan and Shri Amrito Das, Advocates

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Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

21/08/2017

Notice already served. Respondent appears through counsel. This appeal is admitted. The matter taken up, on consent, for final hearing and heard accordingly.

1. The Revenue is in appeal.
2. The issue relates to CENVAT credit touching goods produced for M/s Parle Biscuits Private Limited. The respondent is engaged by that establishment for the production of biscuits.

The question whether the contract between M/s Parle Biscuits Private Limited and the respondent M/s Ganesh Bakers Private Limited carry such terms which are identifiable to determine whether they are independent legal entities for the purpose of the transaction had between M/s Parle Biscuits Private Limited and the respondent and the further question whether the respondent was carrying out the work for M/s Parle Biscuits Private Limited on job work basis, are issues relevant to decide whether the place of removal of the goods is the point of preparation of the products by the respondent or the premises of the godown of M/s Parle Biscuits Private Limited. This issue is primarily and fundamentally a question of fact, which depends upon the terms of the contract between M/s Parle Biscuits Private Limited and M/s Ganesh Bakers Private Limited.

3. While we do not ignore the submission that M/s Parle Biscuits Private Limited has standard form contracts with different persons or establishments which it engages for the purpose of preparing its products, we cannot lose sight of the fact that issues relating to such contracts cannot be decided as a pure question of law which could be governed by judicial precedents. We say this in the context of the fact that certain decisions rendered in similar transactions where M/s Parle Biscuits Private Limited is involved with certain other establishments which prepare the product for sale, were relied

on by either side, either to assert or deny the claim of the respondent for CENVAT credit. We may here and now state that in paragraph 5 of the impugned order of the CESTAT rendered on 25/08/2015, the learned Tribunal had proceeded making reference to the decision in yet another case. This Court had noticed that factor even while this matter came up at the first instance on 19/06/2017. Therefore, on that day it was minuted that after making certain submissions, the learned counsel for the Revenue sought an adjournment to seek clarification as to whether the decisions referred to in paragraph 5 of the impugned order of CESTAT were further challenged by the Department. On 03/07/2017, it was submitted on behalf of the Department that the Revenue had withdrawn the appeal filed against the decision of the Tribunal in one of those matters and such withdrawal of appeal was on the basis of the benchmark as to monetary limit fixed by the C.B.D.T. through its circulars. However, it is pointed out today by the learned counsel for the respondent that the decision of the Tribunal in M. P. Biscuits Private Limited was not challenged, though the appeal against the Tribunal's decision in M. P. Bakers case was withdrawn. Whatever that be, the fact of the matter remains that levy and sufferance of duty, taxes etc. are fiscal liabilities that add on, on the basis of the different transactions. Therefore, even if M/s Parle Biscuits Private Limited had a standard form contract, the decision rendered by the Tribunal in relation to a party who had or has transactions with that establishment could not have been applied without affirmatively holding that the particular transaction which forms the foundation and the substratum of a subsequent case is selfsame. We say this because the Revenue appears to have been insisting that the contract documents as between M/s Parle Biscuits Private Limited and the respondent were not made available for adjudication before the departmental authorities or the Tribunal.

4. In the aforesaid view of the matter, we are inclined to take a view that ends of justice require the Tribunal to reconsider the appeal filed before it by the respondent and which has given rise to the order dated 25.08.2015 which is challenged by the Revenue in this appeal. To facilitate this, we set-aside the Tribunal's order dated 25.08.2015 and remit that appeal for reconsideration in accordance with law, leaving open the right of the respondent to make all submissions before the learned Tribunal including question as to whether the other precedents particularly **Ultratech Cement Limited vs. Commissioner of Central Excise, Raipur**[1] applied to the facts and circumstances of the case. We say this because the learned counsel for the respondent has projected before us the plea that if one were to go by the M.R.P., the question of refusal of the respondent's claim does not arise at all. We hasten to add that we have not expressed anything on the merits of rival

1 2014 (307) E.L.T. 3 (Chhattisgarh)

contentions. We are sure that the Tribunal will expedite the final hearing, however, ensuring that both the parties are given adequate opportunity to place further materials and submissions before it.

5. The appeal is ordered accordingly.

Sd/- Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

(Sharad Kumar Gupta)
Judge

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