Sharayu.

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

CENTRAL EXCISE APPEAL NO. 54 OF 2016

The Commissioner of Central Excise &
Customs, Daman Commissionerate **...Appellant**

Versus

M/s. Polycab Wires Pvt.Ltd. **...Respondent**

Mr. Manglamber Dwivedi, for the Appellant.

Mr. Jitendra Motwani, i/by Economic Laws Practice, for the Respondent.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 20 December 2017

ORDER :

1. This Appeal under Section 35G of the Central Excise Act, 1944 ("***the Act***" for short) challenges the order dated 8th

May 2008 passed by the Customs, Excise & Service Tax Appellate Tribunal (“***the Trubunal***” for short).

2. The Revenue has urged the following questions of law for our consideration:-

(i) Whether in the facts and circumstances of the case, the CESTAT is justified and has committed substantial error of law in holding that issuance of supplementary invoices is not hit by the bar of Rule 7[1][b] of the CENVAT Credit Rules, 2001/2002?

(ii) Whether in the facts and circumstances of the case, the CESTAT is justified and has committed substantial error of law in relying upon its earlier decision rendered in the case of M/s. Jaisingh Wires Pvt.Ltd. rendered vide order No. A/351, 352/WZB/Mum/2005-CII, which was the subject matter of Central Excise Appeal No. 09 of 2006?

3. We note that the impugned order of the Tribunal has allowed the Appeal of the Respondent-Assessee. This was by following its order in case of ***M/s. Jaisingh Wires Pvt.Ltd. Vs. Commissioner of the Central Excise, Daman***[1] decided on 22nd February 2005.

4. The Revenue being aggrieved by the order of the Tribunal in case of ***M/s. Jaisingh Wires Pvt.Ltd.*** (supra) had preferred an Appeal to this Court being Central Excise Appeal No. 35 of 2008. At the final hearing of the Appeal, on 12th January 2011 this Court set aside the order dated 21st February 2005 of the Tribunal in case of ***M/s. Jaisingh Wires Pvt.Ltd.*** (supra) and restored the issue to the Tribunal for deciding the Appeal afresh. The learned Counsel for the parties states that the Appeal of ***M/s. Jaisingh Wires Pvt.Ltd.*** (supra) consequent to the remand by this Court on 12th January 2011 is still

1 ***Appeal Nos. E2351 and 2352 of 2004***

awaiting disposal before the Tribunal.

5. In the above view, it would be appropriate at this stage not to deal with the above question. The interest of justice would require that the impugned order of the Tribunal is set aside and Appeal is restored to the file of the Tribunal for fresh disposal along with the pending Appeal Nos. E2351 and 2352 of 2004 in case of ***M/s. Jaisingh Wires Pvt.Ltd.*** (supra).

6. The Appeal disposed of in above terms. No order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**