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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.164 OF 2016

The Commissioner of Central Excise
Belapur Commissionerate … Appellant

Vs.

M/s. M.N. Furniture … Respondent

Mr. M. Dwivedi i/by Mr. Sham V. Walve for the Appellant.

Mr. Prakash Shah a/w Mr. Jas Sanghavi i/by PDS Legal for the Respondent.

CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.

DATE : 23rd AUGUST, 2017

P.C.

1 Heard the learned counsel appearing for the appellant. The appellant has taken an exception to the judgment and order dated 12th February, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai on an Appeal preferred by the respondent.

2 According to the case of the respondent, it was engaged in the activity of making of furniture/interior decoration work. In the

agreement executed by and between the respondent and its client M/s. Unit Trust of India (UTI), a condition was imposed that if any taxes/ duties is payable on the articles, the same will be the responsibility of the respondent. On visiting the premises of the UTI, it was noticed that various items of furniture were provided by the respondent. On 3rd February, 1998 a show cause notice was issued to the respondent demanding excise duty of Rs.28,73,673/-. By order dated 26th February, 2000 the Adjudicating Authority held that the respondent is a manufacturer and was liable to pay Central Excise duty on goods arising out of the manufacturing activity carried out in the premises of UTI. However, the demand for flush doors as well as aluminium doors was set aside. Being aggrieved by the said order, the respondent preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal which was initially dismissed for non-prosecution. This Court restored the Appeal. By the impugned order which contains separate opinions of the learned Members, the demand was held to be unsustainable and accordingly, the Appeal was allowed.

3 The learned counsel appearing for the appellant invited our attention to the findings recorded by one of the two Members (Shri P.K. Jain, Member [Technical]). He submitted that a finding of fact was recorded that copies of any documents or agreements were not

produced by the respondent to substantiate the contention that it was a sub-contracted work of manufacturing furniture. He pointed out that other Member (Shri Ashok Jindal, Member, [Judicial]) has erroneously observed that the authority did not call upon the respondent to produce the copies of the agreement. His second submission is that in the transaction between the respondent and Unit Trust of India (UTI), the respondent accepted its liability to pay Central Excise Duty and this fact was suppressed. His submission is that the impugned order is perverse and therefore, substantial questions of law as set out arise.

4 We have perused the judgments of both the learned Members. Three questions were formulated by the Appellate Tribunal which read thus :-

> “(a) Whether the appellants are manufacturer or not;
>
> (b) Whether the extended period of limitation can be invoked in the facts and circumstances of the case, and
>
> (c) Whether the matter is required to be sent back to the adjudicating authority for re-quantification of the duty demand or not.”

5 As far as the first question is concerned, there is a diversion of views expressed by two Members. But on second and third questions,

both the Members have concurred. Therefore, we are considering the finding recorded on the second question. In paragraph 18 onwards in the order passed by Shri Ashok Jindal, the findings have been recorded. In paragraph 18.2, the findings recorded by Shri Ashok Jindal, the learned Member reads thus :-

> "18.2 Further, we find that the appellant has relied on the decision in the case of Craft Interiors (supra), wherein initially the Tribunal held that on such items the assessee is not liable to pay duty, but against this decision, the Hon'ble Supreme Court held that furniture would include items like chairs, sofas, tables etc. and shall not be covered fixtures and those items, therefore, they are not liable to pay duty on these items. Although the decision of the Hon'ble Supreme Court in the case of Craft Interiors (supra) is against the appellant, but in that case also, this Tribunal in remand proceedings held that extended period of limitation is not applicable as the issue of leviability of central excise duty on furniture is in nature of issue of interpretation. The same facts are in the case in hand, therefore we have no hesitation to say that in this case also, extended period of limitation is not invokable."

6 In paragraph 18.3, Shri Jindal observed thus :-

> "18.3 We further find that in the show cause notice there is no allegation against the appellant that the appellant has not paid the duty by way of willful misstatement or

> suppression of facts or having mala fide intention not to pay central excise duty in contravention of the provisions of the Central Excise Act/Rules."

7 These are the two reasons given for holding that the extended period was not invokable. We have perused the findings recorded by Shri P.K. Jain, Member (Technical), Mumbai. In paragraph 22, he disagreed with the findings recorded by Shri Jindal, the learned Member on the first issue. In fact, the finding recorded by Shri Jain is on the first issue.

8 The findings recorded in paragraph 18.2 and 18.3 are clearly the findings of facts which are supported by material on record. No substantial question of law arises. The Appeal is accordingly dismissed.

(RIYAZ I. CHAGLA, J) **(A.S. OKA, J)**