IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER,
And
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.A.Nos.720,729,730 and 731 of 2017
C.M.P. 9909,10039,10040 & 10041

M/s. Mantra Industries Limited,
Represented by K.Ananda Kala,
Authorised Signatory,
S.F.No.249/1A (1), Kadathur,
Kattampatty Village,
Annur, Avinashi (T.K),
Coimbatore - 641 107.
... Appellant in W.A.Nos.720 and 729 of 2017

G.Velmurugan, In Charge,
M/s Mantra Industries Limited
Coimbatore.
... Appellant in W.A.Nos.730 and 731 of 2017

Vs

The Commissioner of Central Excise
Customs & Service Tax,
6/7, ATD Street, Race Course,
Coimbatore - 641 018.
... Respondent in the above Writ Appeals.

Prayer:- Writ Appeals filed under Clause 15 of Letter Patent Act, against the order dated 12.04.2017 made in W.P.Nos.8834, 8835, 8836, 8837 of 2017 Petition's are filed Under Article 226 of the Constitution of India to issue Writs of Certiorari calling for the records of the respondent in Order Sl.No.46/2016 Commissioner Sl.No.47/2016 Commissioner Sl.No.46/16-Commissioner and Sl.No. 47/2016-Commissioner respectively dated 30.11.2016 and quash the same.

For Appellants in all WA's	: Ms.Naveena.D
For Respondent in all WA's	: Mr.A.P.Srinivas Senior Standing Counsel

COMMON JUDGEMENT

(Judgment of the Court was delivered by RAJIV SHAKDHER.,J)

1. Issue notice. Mr. A.P.Srinivas, accepts notice on behalf of the Respondent/Revenue.

1.1. With the consent of the counsels for parties, the captioned appeals are taken up for hearing for final disposal.

2. The captioned appeals are directed against the judgement and order dated 12.04.2017, passed by the learned Single Judge in W.P.Nos.8834 to 8837 of 2017.

2.1. Learned Single Judge via the impugned judgment and order dismissed the aforementioned Writ Petitions, on the ground that an alternative remedy was available to them. Accordingly, liberty was granted to the writ petitioners to move the concerned Appellate Authority, within a period of four (4) weeks from the date of receipt of a copy of the said order.

2.2. The Court also clarified that, if, appeals were filed, the same would be decided on merits, albeit, in accordance with law, without reference to the period of limitation, in case, limitation stood expired in the mean time.

3. Ms.D.Naveena, who appears for the Appellants/Assessees, says that, while there are several issues, which emanated from the Order-in-original dated 30.11.2016, the core issue, which arose for consideration, pertains to valuation of Table Top Wet Grinders and Mixer Grinders, which had been supplied by the Appellants/Assessees, to the Tamil Nadu Civil Supplies Corporation for onward supply to persons, belonging to the low income group.

3.2. Therefore, the contention of the Appellants/Assessees, broadly, before the Adjudicating Authority was that, the sales made were not institutional sales and, thus, they were assessable Under Section 4A of Central Excise Act, 1944 (in short, 'the 1944 Act').

3.3. We are informed, that it was further submitted before the Adjudicating Authority that, it is, in these circumstances, that maximum retail price was indicated on the packages, which was in consonance with, not only the provisions of Section 4A of the 1944 Act, but also with the provisions of the Legal Metrology Act, 2009 and the Rules made thereunder.

3.4. Learned counsel informs us that, since, in identical cases, the Tribunal in the matter of: Butterfly Gandhimathi

Appliances Ltd Vs. Commissioner of Central Excise, 2015 (327) ELT 115 (Tri-chennai) had ruled in favour of the Assessees involved therein, the Appellants/Assessees had relied upon the said judgement before the Adjudicating Authority, in support of its submission that the assessable value had rightly been arrived at under Section 4A of the 1944 Act.

3.5. Learned counsel says that since, the Adjudicating Authority had failed to apply the ratio of the judgement of the Tribunal in Butterfly Gandhimathi Appliances Ltd. case, the aforementioned writ petitions were filed in this Court, which were dismissed by the learned single Judge by relegating the parties to an alternative remedy.

3.6. Learned counsel says that, since, the point in issue is squarely covered against the Revenue and in favour of the Assessees, the submission of the Appellants/Assessees, before the learned Single Judge was that, the Adjudicating Authority was bound by the judgement of a higher Appellate Authority.

3.7. In this behalf, learned counsel says that the Appellants/Assessees, relied upon the judgement of the Supreme Court in: Union of India Vs Kamalakshi Finance Corporation Ltd, 1991 (55) ELT 433 (SC). Therefore, according to the learned counsel for the Appellants/Assessees, the learned single Judge ought to have set aside the impugned order and remanded the matter for the fresh adjudication.

4. Mr.A.P.Srinivas, who appears on behalf of the Revenue, while conceding that the judgment in Butterfly Gandhimathi Appliances Ltd. case. is against the Revenue, informs us that the Revenue has preferred an appeal with the Supreme Court, in which notice has been issued, and is, therefore, pending adjudication.

4.1. Furthermore, learned counsel also relies upon another judgement of the Tribunal, in the matter of: Bajaj Food Products (P) Ltd. V. Commissioner of C.Ex., Rohtak, 2015 (317) ELT 116 (Tri-Del.) to contend that the Order-in-original was correct, both in law and on facts.

4.2. Mr.Srinivas, further submitted that against the judgement of the Tribunal in Bajaj Food Products case, an appeal had been preferred which was dismissed by the Supreme Court.

5. We have heard the learned counsels for the parties and perused the record.

6. According to us, what clearly emerges in so far as the issue pertaining to how assessable value has to be arrived at,

in the instant case, is, admittedly, pending consideration of the Supreme Court in: Civil Appeal Diary No.31455 of 2015.

6.1. The record placed before us shows that notice in the Civil Appeal was issued on 01.02.2016 and that the Supreme Court, while issuing notice, has tagged the said Civil Appeal with Civil Appeal No.517 of 2015.

6.2. In these circumstances, for the moment, in our view, it would suffice to dispose of the Writ Appeals with the following directions:

(i) As agreed to by both counsels for parties, the decision, on merits, involving Appellants/Assessees before us, would be governed by the final decision of the Supreme Court in the aforementioned Civil Appeals.

(ii) Since, the Revenue in other cases have kept the Show Cause Notice in abeyance, by keeping them in the call book [which is a method adopted by the Department], no coercive measures will be taken against the Appellants/Assessees, pending consideration of the of the aforementioned Civil Appeals by the Supreme Court.

6.3. We make it clear, though, that our directions and / or observations made hereinabove, will not come in the way of a decision being taken on merits in the matter, if, the Appellants/Assessees, to take recourse to statutory remedies.

7. The Writ Appeals are allowed. The impugned order of the learned single Judge is set aside. However, there will be no order as to costs. Connected CMP's stand closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

sl/dh

To

The Commissioner of Central Excise
Customs & Service Tax,
6/7, ATD Street, Race Course,
Coimbatore - 641 018.

+1cc to M/S.Naveena-D, Advocate Sr. 45512
+1cc to Mr.A.P.Srinivas, Advocate Sr. 46120

W.A.Nos.720,729,730 and 731 of 2017

RSY(CO)
VR(02/08/2017)