IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.2800 of 2009
And
M.P.No.1 of 2009

Commissioner of Central Excise,
Chennai - I Commissionerate,
26/1 (Old No.121), M.G.Road,
Chennai - 600 034. ... Appellant/Respondent

Vs.

1. M/s.Indian Organic Chemicals Ltd.,
   Manali, Chennai - 600 068. .... 1st Respondent/Appellant

2. Customs, Excise and Service Tax Appellate Tribunal,
   South Zonal Bench,
   Shastri Bhavan Annexe,
   26, Haddows Road,
   Chennai - 600 006. ... Respondents/Appellant

Prayer:

Appeal filed under Section 35G of the Central Excise Act, 1944, against the order dated 01.07.2008 passed in Final Order No.645/2008, by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai. In Appeal No.E/957/200 preferred against the order passd by The Commissioner of Central Exise (Appeals), Chennai in order in Appeal No.2/2000[M-1] dated 28/02/2001 against the order passed by the Assistant commissioner Central Excise 'D' Diviction Chennai-1 in order in Original No.33/99 dated 30/07/1999

For Appellant : Mr.A.P.Srinivas

For Respondents : Mr.P.R.Ranganathan

J U D G M E N T

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

1.This is an appeal, which is directed against the judgment and order dated 01.07.2008, passed by the Customs, Excise and Service Tax Appellate Tribunal (in short, the Tribunal).

2.By virtue of the impugned judgment and order, the Tribunal returned two findings, in favour of the Assessee i.e., the first respondent herein.

2.1.First, that it was entitled to the benefit of the Notification numbered 225/86-CE, dated 03.04.1986, with retrospective effect, i.e., 01.03.1986, by virtue of the provisions of Section 2 of the Central Duties of Excise (Retrospective Exemption) Act, 1986 (in short, the 1986 Act).

2.2.Second, that the plea of unjust enrichment in respect of the refund claim made by the Assessee/ first respondent qua, the sum of Rs.5,56,532.10 paid by it, in the form of duty, on Mono Ethylene Glycol (in short, MEG), during the period 01.03.1986 to 02.04.1986, could not be raised by the Revenue, in view of the decision rendered by the Larger Bench of the Tribunal in Kesar Enterprises Ltd. Vs. Commissioner, 2000 (119) ELT 295.

3.The Revenue, being aggrieved by the second finding, returned by the Tribunal, with regard to the unjust enrichment, approached this Court by way of the instant appeal.

3.1.The appeal was predicted on the decision of the Supreme Court in the matter of : Commissioner of Central Excise, Lucknow Vs. Kesar Enterprises Ltd., 2006 (197) E.L.T. 317 (S.C.).

4.The contention of the Revenue was that the principles of unjust enrichment was very much applicable to the refund claim made by the Assessee, in respect of duty paid qua, the subject period on MEG, contrary to what had been held by the Tribunal.

4.1.It is, on this basis, when the appeal was admitted by this Court on 12.10.2009, the following question of law was framed:

> "Whether the 2nd respondent was right in allowing the 1st respondent's plea against unjust enrichment by relying on the Tribunal's Larger Bench decision in Kesar Enterprises Ltd., Vs. Commissioner [2000 (119) ELT 295 (Tribunal-LB)] when the Hon'ble Supreme Court has over ruled the above said Tribunal's Larger Bench decision as reported in ELT [2006 (197) ELT 317 (SC)]".

5.Mr.Srinivas, who appears for the Revenue, thus, argues that in view of the judgment of the Supreme Court in Commissioner of Central Excise, Lucknow Vs. Kesar Enterprises Ltd., the second direction issued by the Tribunal cannot be sustained and therefore, the judgment in this matter, needs to be remanded to the Tribunal, for adjudication, on merits.

6.Mr.P.R.Ranganathan, who appears for the Assessee/ first respondent cannot, but, submit that on account of the aforementioned judgment of the Supreme Court, whereby, the Larger Bench decision in the same matter of the Tribunal has been reversed, the matter requires re-examination by the Tribunal, on merits.

7.Accordingly, the impugned judgment of the Tribunal is reversed to the extent it holds that the bar to unjust enrichment would not be applicable to a refund claim preferred by the Assessee/ first respondent, consequent to the provisions of Section 2 of the 1986 Act.

7.1.The Appeal is allowed and the impugned order is set aside as indicated above, to that limited extent.

7.2.The Tribunal is directed to hear the Assessee, on the merits of the matter.

7.3.Furthermore, given the fact that the appeal filed by the Assessee/ first respondent before the Tribunal, pertains to 2001, the Tribunal is requested to dispose of the appeal, as expeditiously as possible, though not later than 31.08.2017.

7.4.We make it clear that it would be open to both parties, to raise all contentions, with regard to, whether or not, the bar of un-just enrichment would apply to the refund claim preferred by the Assessee/ first respondent.

8.The appeal is disposed of in the aforementioned terms. However, there shall be no order as to costs. Consequently, the connected pending application stands closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

pri

To

1. The Customs, Excise and Service Tax Appellate Tribunal,
   South Zonal Bench,
   Shastri Bhavan Annexe,
   26, Haddows Road,
   Chennai - 600 006.

+1cc to Mr.R.Ragavan, Advocate in sr.no.24335
+1cc to Mr.A.P.Srinivas, Advocate in sr.no.24409

C.M.A.No.2800 of 2009
And
M.P.No.1 of 2009

NM(CO)
NR 23/06/2017