IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

And

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.Nos.2902 and 2903 of 2010

And

M.P.Nos.1 and 2 of 2010

M/s.Visteon Automotive Systems (India) Private Limited,
Rep. by Authorised Signatory
... Appellant in both C.M.As.

Vs.

1.The Additional Commissioner of Central Excise,
Chennai - III Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Commissioner of Central Excise (Appeals),
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

3.Customs, Excise, and Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhavan Annexe,
26, Haddows Road,
Chennai - 600 006.
... Respondents in both C.M.As.

Common Prayer:

Appeals filed under Section 35 G of the Central Excise Act, 1944,

against the order dated 04.03.2010 passed in Final Order No.267 and 268 of 2010 respectively, by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.Parthasarathy
for M/s.Lakshmi Kumaran
For Respondents: Mrs.R.Hemalatha for R1 and R2
Senior Standing Counsel
R3 - Deleted

C O M M O N J U D G M E N T

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

1.These appeals have been filed under 35 G of the Central Excise Act, 1944, whereby, challenge is laid to the final order dated 04.03.2010, passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

2.In both these appeals, the learned counsel for the appellant concedes, that the sole question, which arises for consideration, is, as to the date, when, the period for payment of interest under Section 11 AB of the Central Excise Act, 1944 would commence.

2.1.Briefly, the appellant had paid excise duty on the value of the manufactured goods, at the time of removal.

3.The appellant, in these cases, by virtue of a supplementary invoice raised on its customers, received further consideration. Admittedly, excise duty was paid by the appellant, even on the additional consideration.

3.1.The Department, however, seeks payment of interest in the form of compensation, for the period commencing from the date, when, duty was first paid on the original price of the goods till the period ending with, when duty once again upon receipt of additional consideration by the appellant.

4.Given these facts, the learned counsel for the appellant fairly submits, that this issue is covered against the appellant, by virtue of the decision rendered by the Supreme Court in the matter of : Commissioner of Central Excise, Pune Vs. SKF India Limited, 2009 (239) E.L.T.385 (S.C.).

5.Further, we are informed by the learned counsel for the appellant that the decision rendered by the Supreme Court in the case of SKF India Limited, has been referred to a Larger Bench, by virtue of the order passed in : Steel Authority of India Limited Vs. Commissioner of Central Excise, Raipur, 2015 (326) E.L.T. 450 (S.C.).

5.1.Learned counsel submits that on the reference made to a Larger Bench, no decision has been rendered, as yet.

5.2.Ms.Hemalatha, who appears for the Department, affirms the said position.

6.Having considered the submissions of the learned counsels for the parties, we are of the view, that the decision rendered in the case of S.K.F. India Limited, still holds the field and therefore would be binding on this Court, under Article 141 of the Constitution of India.

6.1.However, having regard to the fact, that the said decision has been referred for reconsideration to a Larger Bench, we are inclined to dismiss the appeals, with the liberty to the appellant to revive the same, after giving due notice to the Department and its counsel, in the event, the decision rendered in Steel Authority of India Limited Vs. Commissioner of Central Excise, Raipur, is in favour of the Assessee.

7.The appeals, are disposed of with the aforesaid observation. The appeals, are directed to be consigned to record. Consequently, the pending applications are also closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Speaking order / Non Speaking order

Index: Yes / No
Internet: Yes / No

To

1.The Additional Commissioner of Central Excise,
Chennai - III Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Commissioner of Central Excise (Appeals),
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

3.The Customs, Excise and Service Tax Appellate Tribunal,
Chennai.

+2cc to Ms.Lakshmi Kumaran.*, Advocate, S.R.No.20447
+1cc to Ms.Hemalatha, Advocate, S.R.No.20613

kgk(CO)
md(19/04/2017)

C.M.A.Nos.2902 and 2903 of 2010 And
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