THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

CENTRAL EXCISE APPEAL No.59 of 2009

14.12.2017

Between:

The Commissioner of Central Excise,
Visakhapatnam-II, Commissionerate,
Port Area, Visakhapatnam

..Appellant

And

M/s.The Andhra Pradesh Paper Mills Ltd.,
Rajamahendravaram, East Godavari District

..Respondent

Counsel for the appellant: Mr.Swaroop Oorilla for Mr.M.V.J.K.Kumar, senior standing counsel for Customs, Central Excise and Service Tax

Counsel for the respondent: Ms.P.Lakshmi Priyanvita for Mr.Vedula Srinivas

The Court made the following:

<u>JUDGMENT</u>: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal by the Revenue raises the following substantial questions of law.

> "1. Whether Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore is justified in relying on judgment of Rajastan High Court reported in AK Spintex Ltd when facts are different in that case?
>
> 2. Whether Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore can grant the relief of refund by ignoring the presumption of passing of incidence of duty under Section 12B of Central Excise Act, 1944?
>
> 3. Whether Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore can grant refund without applying the principle of unjust enrichment by ignoring judgment of Apex Court in **Mafatlal Industries case law [1997 (89) ELT 247 (SC)]** and **Sahakari Khand Udyog Mandai Ltd., case law [2005 (181) ELT 328 (SC)]**?"

2. At the hearing, Mr.Swaroop Oorilla, learned counsel representing Mr.M.V.J.K.Kumar, learned senior standing counsel for Customs, Central Excisse and Service Tax appearing for the appellant, has submitted that this Court has disposed of the appeals filed raising identical substantial questions of law as raised in the present appeal, *vide* common judgment, dated 08.12.2017, in C.E.A.No.24 of 2010 and batch. The learned counsel for the respondent has not disputed this submission.

3. In view of the above, this appeal is disposed of in terms of aforementioned judgment, dated 08.12.2017, in C.E.A.No.24 of 2010 and batch with the direction that the reasons and directions contained therein shall form part of this order.

4. As a sequel to disposal of this appeal, C.E.A.M.P.No.175 of 2017 filed by the appellant shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

14th December, 2017
GHN