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

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A.No. 32 OF 2017

DATED 30TH OCTOBER, 2017

Between:

The Commissioner of Customs,
Central Excise & Service Tax,
Visakhapatnam Commissionerate,
Central Excise Building, Port Area,
Visakhapatnam – 530035 … Appellant

AND

M/s. Sri Vasavi Polymers Private Limited,
Anthakapalli Village,
Rajam Srikakulam District,
Andhra Pradesh – 532127 … Respondent

Counsel for the appellant : Sri B.Narasimha Sharma

Counsel for the respondent : Sri Lakshmi Kumaran

THE COURT MADE THE FOLLOWING

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

This appeal under Section 35 (G) of the Central Excise Act, 1944, arises out of common order dated 03-08-2016 to the extent it pertains to Appeal No. E/109/2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Hyderabad ('the Tribunal' for short).

2. At the outset, it needs to be observed that though as many as five appeals were disposed of by the common order, the issues involved therein are not connected to each other though the assessee is common. As noted hereinbefore, the present appeal pertains to Appeal No. E/109/2007. The dispute therein is related to transactions pertaining to Vasavi Polymers Private Limited (for short, 'VPPL') and Vasavi Agencies. A show-cause notice was issued on 25-02-2005 to the respondent demanding central excise duty of Rs.87,83,409/- allegedly evaded by it under *modus operandi* adopted by it, whereby it allegedly sold a product with superior quality in the name of inferior product. Upon considering the objections of the assessee, the adjudicating authority by its original order dated 22-12-2005 held that VPPL and Vasavi Agencies are not related persons and therefore dropped the proceedings. Aggrieved by this order, the department has filed an appeal which, as noted above, was dismissed by the Tribunal.

3. A perusal of the order of the Tribunal shows that altogether five appeals were disposed of by the said order. The facts in Appeal No. E/109/2017 were narrated in para No. 1.3 – iv of the order. The rest of the order was devoted to discussing the facts in other cases such as Appeal Nos. E/848/2006, E/848-A/2006, E/144/2007 and E/254/2007. At the end of the order, the Tribunal has straightaway dismissed Appeal No. E/109/2017 without undertaking any discussion on merits whatsoever. Learned counsel for the respondent has not disputed the fact that the Tribunal has not discussed the merits of the aforementioned appeal filed by the appellant.

4. On these facts, we are of the opinion that the Tribunal has committed a serious error in dismissing the appeal without adjudicating the same on merits. Therefore, without expressing any opinion on the merits of the case, the order under appeal is set aside and the case is remanded to the Tribunal for fresh adjudication by passing a speaking order in Appeal No. E/109/2017 after hearing both sides.

5. The appeal is accordingly allowed.

C.V.NAGARJUNA REDDY, J.

CHALLA KODANDA RAM, J.

Date: 30th October, 2017.
JSK