The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

CEA.Nos.24, 25, 30, 39, 75 & 328 of 2010

Dt: 08-12-2017

CEA.No.24 of 2010

Between:

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

....Appellant

and

M/s.The Andhra Pradesh Paper Mills Ltd.,
Unit: APPM, rep. by its Managing Director,
Rajahmundry, East Godavari District

....Respondent

Counsel for the Appellant: **Sri Swaroop Oorilla for Sri MVJK Kumar, Senior SC for Customs, Central Excise and Service Tax**

Counsel for the respondent: **Mr.C.V.Narasimham**

The Court made the following:

Common Judgment: **(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

The issue and the parties being common in all these Appeals, they are heard and being disposed of together.

The respondent is the assessee in respect of Central Excise Duty for different assessment years. In respect of a part of the Excise Duty collected from it by the Revenue, refund claims have been made by the respondent. While allowing the refund claims, the Revenue, however, credited the amounts to the consumer welfare fund instead of refunding the same to the respondent on the ground that it has not passed the test of unjust enrichment as envisaged under Section 12B of the Central Excise Act, 1944. Feeling aggrieved by those orders, the respondent filed a batch of Appeals pertaining to each assessment year before the Customs, Excise and Service Tax Appellate Tribunal, South Zone.

By separate but similar orders, the Tribunal has allowed the Appeals of the respondent following the judgment of the Madras High Court in **Addison & Company Ltd. v. Collector**[1].

---

[1] **2001 (129) E.L.T. 44 (Mad.)**

At the hearing, Mr.Swaroop Oorella, learned Counsel for the Revenue, submitted that as the judgment in **Addison and Company** (1 supra) has since been reversed by the Supreme Court in **Commissioner of Central Excise, Madras vs. Addison & Co. Ltd.**[2]**,** the orders of the Tribunal are liable to be set aside.

Mr.C.V.Narasimham, learned Counsel for the respondent, while fairly stating that the judgment of the Madras High Court in **Addison and Company** (1 supra) has been reversed by the Supreme Court in **Commissioner of Central Excise, Madras** (2 supra), requested for remanding the cases to the Tribunal to render a specific finding as to whether the respondent has not passed on the burden of duty to the buyer *i.e.,* the final consumer, in order to know whether he, ultimately, bore the burden of Excise Duty.

The learned Counsel for the appellant has not seriously opposed this request, as there is a consensus between the learned Counsel to the extent that no specific finding, as to whether the respondent has passed on the burden of duty to the final buyer or not, has been rendered in these cases by any authority.

---

[2] **2016 (339) E.L.T. 177 (S.C.)**

In the light of the above, the orders under appeals are set aside. The matter is remanded to the Tribunal for considering whether the respondent has passed on the burden of duty to the buyer, which term is not restricted to the first buyer alone but also extends to the ultimate customer as held by the Constitution Bench of the Supreme Court in **Mafatlal Industries Ltd., vs. Union of India**[3]. The Tribunal shall decide the said issue after notice to both parties and hearing them.

All these Appeals are, accordingly, allowed to the extent indicated above.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 08-12-2017
lur

[3] 1997 (89) ELT 247 (SC)