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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 152 OF 2018
WITH
CENTRAL EXCISE APPEAL NO. 154 OF 2018

The Commissioner of CGST and Central Excise, Thane Rural … Appellant

V/s.

NRC Ltd. … Respondent

Mr. Pradeep S. Jetly, with Mr. Nikhil Wadikar, for the Appellant.

CORAM: M.S.SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE: 30TH OCTOBER, 2018.

PC:-

1. This Appeal under Section 35G of the Central Excise Act,, 1944 challenges the common order dated 11th April, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal). The common impugned order dated 11 April 2017 dismissed two appeals filed by the Revenue from the orders of the Commissioner (Appeals) allowing the Respondents claim for refund. This on the ground that refund is not barred by principle of unjust unreichment.

2. The Revenue has urged the following re-framed question of law for our consideration:-

> ***"Whether on the facts and circumstances of the case and in law was the Tribunal justified in holding that***

the principle of unjust unreachment is not applicable to the grant of refund"?

3. The impugned order of Tribunal disposed of the two Appeals by recording as under:-

> ***"The facts and circumstances of the case does not exhibit whether the order entitling refund to the respondent is either stayed or reversed by any higher Court in appeal by Revenue. Once the matter is concluded and the appeal has reached to finality, it is no more possible to re-open that order in any consequential proceedings. Accordingly, Revenue's appeal being devoid of merit is dismissed. Both sides agree to the above proposition of law and facts."***

4. From the above it is evident that the learned counsel for the Revenue before the Tribunal conceded / accepted the position that once the matter is concluded and the appeal has reached to finality, it is not possible to re-open that order in any consequential proceedings. It also seems that the learned Advocate / D.R. for Revenue has accepted the view of the Tribunal that the Revenue's Appeal is devoid of merits.

5. In view of the above concession / submission made on the part of the Revenue's counsel, no substantial question of law would arise for our consideration. This is so on account of the fact

that once a concession made the dispute ceases to be a debatable issue. In fact this Court in the case of ***Commissioner of Income Tax Vs. Mahalaxmi Glass Works P. Ltd***.[1] had occasion to hold that when concession has been made before Tribunal by the department representative then no question of law would arise for consideration. Therefore without considering the correctness or otherwise of the impugned order dated 11 April, 2017, we are of the view that the question as proposed in these facts do not give rise to the substantial question of law as no debatable question arise for consideration before us.

6. In the above view, the Appeals are dismissed.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**

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1 (2009) 318 ITR 116 (Bom.)