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

CENTRAL EXCISE APPEAL NO. 64 OF 2018

Sarla Performance Fibers Ltd. & Ors. .. Appellants
v/s.
The Commissioner (Adjudication),
Central Excise ..Respondent

Mr. Prakash Shah a/w Mr. Jas Sanghavi I/b PDS Legal for the appellants
Mr. Karan Adik I/b Mr. Ram Ochani for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.
DATED : 1st NOVEMBER, 2018.

P.C.

1. This appeal under Section 35 G of the Central Excise Act, 1944 (the Act) challenges the common order dated 25th October, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).

2. The Common impugned order disposed of 33 appeals by the different assessees and one appeal by the Revenue. Besides it also disposed of 7 miscellaneous applications. Out of 7 miscellaneous applications, 2 miscellaneous applications sought implementation of an order dated 8th October, 2009. Thus, in the aggregate, there were 41 appeals / applications disposed by the common impugned order all

originating / emanating from a common order dated 18th December, 2006 passed by the Commissioner (Adjudication).

3. The appellant urges the following questions of law for our consideration :-

> *(i) Whether in the facts and circumstances of the case and in law, the Tribunal is right in remanding the proceedings to the Adjudicating Authority, after keeping the appeals pending almost for 11 (eleven) years before it on the sole ground that it had remanded the proceedings in the cases of Shree Sanand Textile Industries Ltd. and Karan Fibres & Fabrics Ltd ?*
>
> *(ii) Whether in the facts and circumstances of the case and in law, is the order of the Tribunal is contrary to the binding judgment of this Court in the case of the Commissioner of Central Excise, Pune-I Vs. Syntel International (P) Ltd. reported in 2015 (39) S.T.R. 27 (Bom)?*

4. The order dated 18th December, 2006 of the Commissioner (Adjudication) is a common order holding the appellant not entitled to the benefit of Notification No.1 of 1995 dated 4th January, 1995. The above Notification grants exemption to goods cleared by an 100% EOU to other 100% EOU on the strength of CT-3 Certificate issued by the consignee. The appellant cleared its goods as also the some of the other noticees to one Gupta Carpet Udyog Ltd. (GCUL). The appellant (along with other parties similarly placed) were held liable to payment of duty as benefit of exemption was not available under Notification

No.1/95 dated 4th January, 1995 thus demanding duty from the appellant and imposing penalty upon GCUL by order dated 18th December, 2006. The Revenue had also filed an appeal from the common impugned order dated 18th December, 2006 in respect of M/s. GCUL and M/s. Shri. Sanand Textile Industries Ltd. and Karan Fibres and Fabrics Ltd.

5. The appeals filed by two of the assessees viz. M/s. Shree Sanand Textile Industries Ltd. and M/s. Karan Fibres and Fabrics Ltd. to the Tribunal were part of the common order dated 18th December, 2006 of the Adjudicating Authority. The above two appeals were disposed of by the Tribunal on 8th October, 2009. This by setting aside the common impugned order dated 18th December, 2006 to the extent it related to the two of them and restored it to the Commissioner (Adjudication) for fresh disposal in accordance with law. As the Commissioner (Adjudication) had not complied with the orders dated 8th October, 2009 by adjudicating the notices afresh, the two assessees had filed applications seeking implementation of the order dated 8th October, 2009 passed by the Tribunal. These two applications were heard by the Tribunal along with 33 appeals (including that of the appellant) and Revenue's appeals in case of the adjudication order passed in case of

GCUL. The above were all disposed of by the common order dated 25th October, 2017 of the Tribunal. This by way of remand, directing the adjudicating authority to dispose of the proceedings expeditiously.

6. We find that the impugned order of the Tribunal has taken into account the fact that the order in appeal was a common impugned order dated 18th December, 2006 which was subject matter of challenge before the Tribunal and disposed of on 8th October, 2009. Thus, following the above order, the Tribunal set aside the impugned order dated 25th October, 2017 and restored the notices to Commissioner (Adjudication) for fresh disposal.

7. The grievance of the appellant before us is that after the appeal was pending for 11 years before the Tribunal, it was not justified in remanding the proceedings to the Adjudicating Authority. This grievance has no merit as the delay was only on account of the appellant's appeal awaiting its turn before the Tribunal. It is true that a similar appeal filed by the M/s. Shri. Sanand Textile Industries Ltd. (supra) and M/s. Karan Fibres and Fabrics Ltd.(supra) were disposed of in 2009 by the Tribunal. However, unless the parties invite the attention of the Tribunal that the issue is covered, no occasion would

arise for the Tribunal to have any knowledge of the same. In this case, no application was filed by the Appellant for early hearing by pointing out that the issue is covered by its earlier order. This delay was only in view of the appeals awaiting its normal turn for consideration. It is not the case of the appellant before us that consideration of their appeal was deliberately delayed by the Tribunal. In these circumstances, the grievance of delay in disposing of the appeals by the Tribunal has no merits and is not accepted.

8. It was next submitted that in the present facts, there was no need for the Tribunal to remand the proceedings for re-adjudication. We find that the very order dated 18th December, 2006, which was challenged before the Tribunal, was considered by a co-ordinate bench of the Tribunal. The co-ordinate bench in the case of M/s. Shri. Sanand Textile Industries Ltd. (supra) on consideration of the very order dated 18th December, 2006 had concluded that it was not properly passed for reasons recorded therein and restored the issue to adjudicating authority for reconsideration. Thus, consistency and law of precedent would require the same be followed by the Tribunal even in this case. More particularly, in the absence of the earlier order being stayed by a higher forum or some such distinction in facts or law being pointed out.

Thus, the decision of this Court in Syntel Infotech (P) Ltd. (supra) would not in the facts and circumstances of this case, be applicable.

9. Therefore, in the above view, no substantial question of law arise in the present facts. Thus, not entertained.

10. However, we find that the show cause notice in this case is issued in 2001. The Tribunal in the impugned order records its expectation that the re-adjudication shall be completed by 30th June, 2018. We are informed that the re-adjudication has not even commenced inasmuch as no common adjudicator as directed by the Tribunal has been appointed by the Central Board of Indirect Taxes and Customs. Thus, we asked Mr. Adik for the Revenue the time within which the adjudication proceedings would commence. On instruction, he states within eight weeks from today a common Adjudicating Authority would be appointed. We accept his statement.

11. Accordingly, the appeal is dismissed. No order as to costs.

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