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

CENTRAL EXCISE APPEAL NO. 49 OF 2017

M/s. Vilson Roofing Product Pvt. Ltd. … Appellant
V/s.
The Commissioner of Central Excise Kolhapur Commissionerate …Respondents

Ms. Manasi Patil, I/b Padmavati Patil for the Appellant.
Mr. Swapnil Bangur with Mr. Satyaprakash Sharma for the Respondents.

CORAM: M.S.SANKLECHA & RIYAZ I. CHAGLA, JJ.
DATED: 24TH SEPTEMBER, 2018.

PC:-

1. This Appeal under Section 35 G of the Central Excise Act, 1944 challenges an order dated 7th June, 2016 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal). The impugned order dated 7 June 2016 dismissed the Appeal from order dated 30th June, 2011 was dismissed upholding the denial of refund on ground of unjust enrichment.

2. Ms. Patil, the learned counsel in support of the Appellant urges only following re-framed question of law for our consideration:-

a) Whether on the facts and in the circumstances of the case and in law as the Tribunal justified in

> ***rejecting the claim of refund on the ground of unjust enrichment without having considered the Appellants submissions with regard to the CA certificate in support of its claim?***

3. The Appeal is admitted on the above substantial question of law.

4. At the request of parties, the appeal is taken up for final disposal at this stage as the dispute is within a very narrow compass.

5. The only grievance of the Appellant before us is that the impugned order dated 7 June 2016 is that its claim for refund is rejected on account of unjust enrichment in breach of principles of natural justice. It is submitted that its submissions and reliance upon the Chartered Accountant certificate to establish that the burden of duty has not been passed on by the Appellant's to its customers, though recorded has not been dealt with. Ms. Patil very fairly states that mere passing of credit notes would not amount to discharge of burden to establish that the duty has not been passed on customers and invites our attention to the decision of the Supreme Court in the case of ***Commissioner of Central Excise, Madras Vs. Addison & Co. Ltd.[1].*** However, she

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1 2016 (339) ELT 177 SC.

points out while holding so, the Apex Court has observed in paragraph 35 and 36 of its order (in respect of one of the Appeal from a group of Appeals disposed of by the Common order) the Court observed that where the Chartered Accountant's certificate has been produced in support of a claim and its genuineness has been accepted by the Tribunal then in such a case, the burden of not having passed on duty stands discharged.

6. We note that as rightly contended, the impugned order does not deal with the Appellant's contention that the burden stands discharged by virtue of the Chartered Accountant's certificate. The impugned order of the Tribunal merely relied upon decisions of its coordinate benches to conclude that the Appellant has not discharged its burden of establishing that duty has not been passed on by the Appellant's to its customers. In none of the cases relied upon by the impugned order of the Tribunal was the claim to establish absence of unjust enrichment supported by a Chartered Accountant's certificate as in this case.

7. In the above view, the substantial question of law as formulated is answered in the negative i.e. in favour of the Appellant and against the Respondent – Revenue.

8. The impugned order dated 7 June 2016 is set aside and the Appeal of the Appellant is restored to the Tribunal for fresh disposal in accordance with law.

9. Appeal allowed in above terms.

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