THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

C.E.A.NO.79 of 2010

JUDGMENT: (per SK,J)

This appeal by the Revenue under Section 35(G) of the Central Excise Act, 1944, seeks to raise the following substantial questions of law in relation to the final order dated 18.02.2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, in Appeal No.Excise/874/2005:

> '(i) Whether Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, is justified in relying on judgment of Rajastan High Court reported in AK Spintex Limited when facts are different in that case?
>
> (ii) Whether Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, can grant the relief of refund by ignoring the presumption of passing of incidence of duty under Section 12B of the Central Excise Act, 1944?
>
> (iii) Whether Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, can grant refund without applying the principle of unjust enrichment by ignoring judgment of Apex Court in Mafatlal Industries [1997 (89) ELT 247 (SC)] and Sahakari Khand Udyog Mandal Limited [2005 (181) ELT 328 (SC)]?'

Sri B.Srinivasa Rao, learned counsel representing Sri M.V.J.K.Kumar, learned standing counsel for the Revenue, and Sri C.V.Narasimham, learned counsel appearing for the respondent assessee, reported that the issues sought to be raised in this appeal are squarely covered by the decision of this Court in C.E.A.No.24 of 2010 and batch. A copy of the common judgment dated 08.12.2017 passed by a Division Bench of this Court in C.E.A.No.24 of 2010 and batch is placed on record.

For reasons alike as were mentioned in the aforestated common judgment and in terms thereof, the order under appeal is set aside and the matter is remanded to the Customs, Excise and Service Tax Appellate

Tribunal, South Zonal Bench, Bangalore, to consider whether the respondent assessee 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 Limited v. Union of India[1]. The Tribunal shall decide the said issue after issuance of notice to both parties and hearing them.

The appeal is accordingly allowed leaving the substantial questions of law raised unanswered in the circumstances.

Pending miscellaneous petitions, if any, shall stand disposed of in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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P.KESHAVA RAO,J

Date:31.01.2018

GJ

[1] 1997 (89) ELT 247 (SC)