IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.38 of 2018 (O&M)
Date of Decision.09.08.2018

Commissioner of Central Excise, Delhi-III ...Appellant

Vs

Johnson Matthey India Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sourabh Goel, Advocate
for the appellant.

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<u>RAJESH BINDAL J.</u>

The appellant in the present appeal has challenged the order dated 03.03.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chandigarh arising out of Appeal No.E/1465/2011, raising the following substantial questions of law:-

"(i) Whether in the facts and circumstances of the case, the Ld. CESTAT has committed an error in relying upon the judgment of the Hon'ble Supreme Court reported in 2016 (339) ELT 177 (SC), Commissioner of Central Excise, Madras Vs. Addison & Co. Ltd.

(ii) Whether in the facts and circumstances of the case, the Hon'ble CESTAT was justified in presuming that the certificate issued by the Chartered Accountant and the debit notes issued by M/s FMI Automative Components Ltd., Gurgaon to be the valid document in the absence of other corroborative evidence for retrospective amendment regarding downward revision of price of the goods?

(iii) Whether in the facts and circumstances of the case, the Hon'ble CESTAT is justified in considering the debit notes issued by the buyer to be the evidence to pass the bar of unjust enrichment for the purpose of Section 11 B of CEA, 1994?

(iv) Whether the Ld. Tribunal erred in allowing the appeal with consequential benefits, ignoring that in any case, even as per the judgment of the Hon'ble Supreme Court, the refund on account of debit notes issued by the buyer, when the incidence of duty has already been passed on by the respondent to the buyer at the time of issuance of invoice would amount to undue enrichment?

(v) Whether the Ld. Tribunal committed a grave error in equating the present case where refund has been sought on the account of reduction of price of the goods retrospectively by the buyer with a case where the refund was sought on account of excess paid duty?

At the very outset, learned counsel for the appellant did not dispute the fact that the amount involved in the present appeal is ₹ 11,76,679/-. As the amount involved is less than the limit prescribed in the Circular issued by the Central Board of Indirect Taxes &

Customs (Judicial Cell) dated 11.07.2018, the present appeal be dismissed as not maintainable.

Ordered accordingly. Consequently, the application for condonation of delay in refiling of the appeal is also dismissed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

August 09, 2018
Pankaj*

Whether speaking/reasoned	**Yes/No**
Whether reportable	**Yes/No**