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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 10 of 2019

- M/s Mahalaxmi Steel Industries (Now Known As M/s Mahalaxmi Structures (P) Ltd. Through Its Director Mr. Shyam Sunder Agrawal, S/o Shri Sitaram Agarwal, Aged About 45 Years, Having Its Office At Near Jhabak Petrol Pump, Ring Road No.2, Gogaon, Raipur (CG)

---- Appellant

Versus

- Commissioner, Central Excise & Customs Raipur, Central Excise Building, Tikrapara, Raipur (CG)

---- Respondent

For Appellant	:	Mr. Vivek Chopda, Advocate
For Respondent	:	Mr. Maneesh Sharma, Advocate

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Ajay Kumar Tripathi, CJ

05/03/2019

1. Tax case has been filed by appellant - M/s Mahalaxmi Steel Industries against the order dated 18.9.2018 passed in Appeal No.E/2736/2010-(SM) by the Customs Excise & Service Tax Appellate Tribunal, New Delhi (henceforth 'the Tribunal').

2. Before reverting to the order under challenge in the present tax case, the Court is required to take notice of the previous round of litigations and adjudications to get better clarity on the final issue i.e. impugned order dated 18.9.2018 passed by the Tribunal.

3. Appellant - M/s Mahalaxmi Steel Industries was raided on gathering intelligence that the company was despatching iron and steel products to

Nagpur and other places through a transporting agency and a commission agent without issuance of Central Excise Invoices and payment of Central Excise Duty. A show-cause was issued to which response was given. The Assessing Authority thereafter created liability upon the Company against which an appeal was preferred before the Commissioner (Appeals-1), Raipur. The Commissioner (Appeals-I), Raipur set aside the order passed by the Assessing Authority and remanded back the matter to the Assessing Authority for re-examining the issue afresh. Re-quantification of demand was required to be done for the purpose of imposition of penalty under Section 11 AC of the Central Excise Act, 1944 (for short 'the Act of 1944') including recovery of interest thereon. The appeal was disposed off by way of remand for *de novo* consideration. This order is dated 14.7.2008.

4. It was the Revenue which was not satisfied with the order of remand passed by the Commissioner (Appeals-I), Raipur and therefore the same was assailed by it before the Tribunal by preferring appeals bearing No.E/1146 & 1154/2009-Ex (BR). A copy of the order of the Tribunal passed on 10.7.2009, in the appeals of the revenue, is before us. The appeals were allowed and the Tribunal took a view that the order of the Commissioner (Appeals-I), Raipur was patently illegal because he had no power to remand the matter pursuant to the amendment in the provisions of law, especially under Section 35A with effect from 11.5.2009. The Tribunal therefore set aside the order passed by the Commissioner (Appeals-I), Raipur i.e. order dated 14.7.2008, holding it to be without jurisdiction and remitted the matter to the Commissioner (Appeals-I) for deciding the matter afresh in accordance with law.

5. It seems that after remand the Commissioner (Appeals-I) decided the matter, more or less, in similar terms as the original Assessing Authority. It is the order dated 23.6.2010 passed by the Commissioner (Appeals-I) after the remand which the Company challenged before the Tribunal.

6. The company thereafter assailed the decision of the Commissioner (Appeals-I) by preferring Appeal No.E/2736/2010 before the Tribunal. The Tribunal dismissed the appeal by order dated 18.9.2018 which is subject-matter of challenge in the present Tax Case.

7. Submission of learned counsel representing the assessee is that the Tribunal has committed error by refusing to interfere with the order passed by the Commissioner (Appeals-I) after remand on an erroneous ground that previous order passed by the Commissioner dated 14.7.2008 was never challenged by the assessee company. Challenge was made by the revenue on a limited ground whether the Commissioner (Appeals-I) had power to remand the matter to the subordinate authority. It was the view of the Tribunal that since the appellant company did not assail the order of the Commissioner, therefore, they cannot do so now. The earlier order of remand was tested on a limited ground, whether such an order could be passed by the Commissioner (Appeals-I).

8. We fail to appreciate the logic adopted by the Tribunal for the reason that the Tribunal itself in its earlier round of adjudication had clearly held in uncertain terms that the order dated 14.7.2008 was passed by the Commissioner (Appeals-I) without jurisdiction. In fact, the Tribunal goes to the extent of saying that the order dated 14.7.2008 would be *ab initio* bad in law. It does not clarify that the order was being set aside for a limited purpose and not on the merits as such. If the order dated 14.7.2008 was

declared to be *ab initio* bad in law, there was no occasion for the company to separately assail that order. An *ab-initio* void order cannot be so for the revenue but will continue to operate against the assessee.

9. We, therefore, do not find the view so taken by the Member (Judicial) in the order dated 18.9.2018 passed in Appeal No.E/2736/2010- (SM) to be logical. Therefore, we are constrained to set aside the said order, remand the matter back to the Tribunal with a direction that the Tribunal will be obliged to hear the assessee as to the merits of the order passed by the Commissioner (Appeals-I), Raipur after remand, which was subject matter of challenge in Appeal No.E/2736/2010-(SM).

10. Appeal is allowed to the extent indicated above.

Sd/-	Sd/-
(Ajay Kumar Tripathi)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-