IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 13 OF 2007

M/s. Gauri Plasticulture P. Ltd. .. Appellant.
v/s.
The Commissioner of Central Excise .. Respondent.

AND

CENTRAL EXCISE APPEAL NO. 257 OF 2007

The Commissioner of Central Excise
Mumbai IV, Mumbai .. Appellant.
v/s.
Bombay Dyeing And Manufacturing Co. Ltd... Respondent.

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Ms. Padmavati Patil, a/w. Mr. Kiran Chavan, i/b. M.H. Patil, for the Appellant.

Mr. Pradeep S. Jetly, for the Respondent.

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CORAM: M.S.SANKLECHA, &
S.C. GUPTE, JJ.
DATE : 16 JULY, 2019.

P.C:-

. These two appeals from the orders of the Customs, Excise & Service Tax Appellate Tribunal (Tribunal), were admitted on 13 December 2007 (Appeal No.13 of 2007) and on 30 July 2008 (Appeal No.257 of 2007) :

2. Appeal No.13 of 2007 was admitted on the following substantial questions of law:

"1. Whether the Tribunal erred in holding that cash refund of un-utilized credit is not permissible, as the Appellants were not compelled to raise debit from PLA.

2. Whether the Appellants, when have stopped production due to closure of factory and surrendered registration certificate on 8.9.2000, the un-utilized credit is refundable under Section 11B, in the absence of any express prohibition for such cash refund."

3. Appeal No.257 of 2007 was admitted on the following substantial question of law :

3. "Whether cash refund is permissible in terms of clause (c) to the proviso to section 11B(2) of the Central Excise Act, 1944 where an assessee is unable to utilize credit on inputs."

4. It is an agreed position between the parties that the issue raised in the above questions along with similar questions arising in **Union of India and Others vs. M/s. Simplex Mills Co. Ltd.** (Central Excise Appeal No.28 of 2008) were referred to the Larger Bench of this Court by order dated 23 April 2016. The following three questions were referred for the opinion of the Larger Bench of this Court:

"(a) Whether cash refund is permissible in terms of clause (c) to the proviso to section 11B(2) of the Central Excise Act, 1944 where an assessee is unable to utilize credit on inputs?

(b) Whether by exercising power under Section 11B of the said Act of 1944, a refund of un-utilized amount of Cent Credit on account of the closure of manufacturing activities can be granted?

(c) Whether what is observed in the order dated 25th January 2007 passed by the Apex Court in Petition for Special Leave to Appeal (Civil) No. CC 476 of 2007 (Union of India vs Slovak India Trading Company Pvt Ltd) can be read as a declaration of law under Article 141 of the Constitution of India? ”

5. On 14 April 2007, the Larger Bench of this Court disposed of all the three questions referred to it by Division Bench of this Court by answering the same in favour of the Revenue and against the Assessee.

6. In the above view, it is an admitted position before us substantial questions of law in Central Excise Appeal Nos.13 of 2007 and 257 of 2007 are answered in favour of the Revenue and against the Assessee.

7. Accordingly, both the appeals are disposed of by answering the three questions in favour of the Revenue and against the Assessee.

(S.C. GUPTE,J.) **(M.S.SANKLECHA,J.)**

Smita Gonsalves
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