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

CENTRAL EXCISE APPEAL NO. 244 OF 2017

The Commissioner Central Excise, Nagpur … Appellant.
V/s.
M/s. Maharashtra Steel Rollings Mills Ltd.
and another. … Respondents.

WITH
CENTRAL EXCISE APPEAL NO. 245 OF 2017

The Commissioner Central Excise, Nagpur … Appellant.
V/s.
M/s.KEC International Ltd. and another. … Respondents.

WITH
CENTRAL EXCISE APPEAL NO. 246 OF 2017

The Commissioner Central Excise, Nagpur … Appellant.
V/s.
Shri Janki Shah and another. … Respondents.

WITH
CENTRAL EXCISE APPEAL NO. 247 OF 2017

The Commissioner Central Excise, Nagpur … Appellant.
V/s.
M/s.Sanvijay Re-rolling & Engg. Works Ltd.
and another. … Respondents.

WITH
CENTRAL EXCISE APPEAL NO. 248 OF 2017

The Commissioner Central Excise, Nagpur … Appellant.
V/s.
M/s.Sunrise Structurals & Engineering Ltd.
and another. … Respondents.

WITH
CENTRAL EXCISE APPEAL NO. 249 OF 2017

The Commissioner Central Excise, Nagpur … Appellant.
V/s.
Shri Puranlal Agrawal and another. … Respondents.

WITH
CENTRAL EXCISE APPEAL NO. 250 OF 2017

The Commissioner Central Excise, Nagpur … Appellant.
V/s.
Shri Sanjay Agrawal and another. … Respondents.

Mr.Swapnil Bangur for the appellant in appeals.
Mr.V.Sridharan, Senior Advocate with Mr.Jas Sanghvi and Ms.Divyasha Mathur i/b. PDS Legal for the respondents in all appeals.

CORAM : A.S.OKA AND M.S.SANKLECHA, JJ.

DATE : 22nd March 2019.

P.C.:

These appeals under section 35G of the Central Excise Act, 1944 (for short "the said Act") were filed by the appellant- Revenue challenging a common order dated 27th August 2004 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "the Tribunal"). The common impugned order dated 27th August 2004, inter alia, disposed of these seven appeals. These appeals were filed before the Nagpur Bench of this Court in 2005 and were allotted Nos.3/2005, 5/2005, 6/2005, 7/2005, 8/2005, 11/2005, and 14/2005.

2. These appeals as filed by the Revenue did not contain any proposed substantial question of law. Thus, on 6th September 2007, the Court directed the appellant to furnish questions of law which were substantial. Accordingly, the following questions were submitted by the appellant for consideration of the Court:

> "1. Whether the observation of the Hon'ble Tribunal that provisions of Section 38A of the Central Excise Act, 1944 are invokable only when any statute is 'amended', 'repealed', 'superseded' or 'rescinded' and will not apply to cases of 'substitution' of provisions of statues, is correct.
> 2. Whether, having regards to the facts of the case, the MODVAT Credit availed by the receiver cannot be altered by following the route of Rules 57-I(1)(ii) of the erstwhile Central Excise Rule, 1944 and that the same should have been covered under Rule 57E (ibid) especially when Rule 57E deals with the adjustment of credit subsequent of availment by the receiver of inputs.
> 3. Whether the Hon'ble Tribunal is right in holding that the condition stipulated in Notfn. No.58/97-CE (NT) dtd. 24.11.1997 granting deemed credit benefit on goods removed by units working under Section 3(A) of the Central Excise Act, 1944 are only procedural in nature and that non-compliance of the same would not take away deemed credit benefit.
> 4. Whether, having regards to the facts of the case, the Hon'ble Tribunal was correct in dropping the penalty imposed under Rule 173Q of the Central Excise Rules, 1944 against M/s. Maharashtra Steel Rolling Mills Ltd., Bhandup, Mumbai.

3 On 18th September 2009, the Court after hearing the parties admitted the seven appeals only on the following identical substantial question of law:

> "Whether interpretation of provisions of Section 38A of the Central Excise Act, 1944, in the light of Section 6 of General Clauses Act by the Customs, Excise & Service Tax Appellate Tribunal is proper or not?

4. Thereafter, all these appeals were transferred from the Nagpur Bench of this Court to the Principal Seat at Bombay. Consequently, the seven appeals have now been allotted new appeal numbers by the Registry at Bombay.

5. At the very outset, Mr.Sridharan, learned senior counsel appearing for the respondents pointed out that the admitted substantial question of law is academic. This, in view of the fact that the impugned order of the Tribunal decided the appeals in favour of the respondents not only on the issue which is framed above as substantial question of law but also on other issues including the issue of limitation. Thus, even if the above substantial question of law is answered in favour of the Revenue, it would have no impact on the other issues on which the respondents' appeals were allowed. It was further pointed out to us that the respondents had filed an affidavit on 21st September 2010 wherein it has been specifically stated that even if the substantial question of law is decided in favour of the appellant- Revenue, the impugned order of the Tribunal allowing the respondents' appeals will survive as all issues, including issue of limitation have been decided in favour of the respondents. In spite of the above, the Revenue did not proceed to frame any other questions of law. This only because the Revenue is not

aggrieved by the other parts of the impugned order of the Tribunal allowing the appeals of the respondents.

6. On being confronted with the aforesaid submission, Mr.Bangur, learned counsel appearing for the appellant- Revenue fairly conceded that even if the substantial question of law is answered in favour of the Revenue, the other issues on which the appeals were decided in favour of the respondents will not be affected. Nevertheless it is his submission that the specific substantial question of law as admitted should be addressed by the Court and, thereafter, the other questions which were raised at the time of admission of appeals should also be reconsidered in terms of proviso to Section 35G(4) of the said Act.

7. In the facts of these cases, we are of the view that before the Court, at the time of admission, the questions as proposed by the Revenue did not raise any issue with regard to demand being barred by limitation. Thus, that issue stands concluded in favour of the respondent even as per the Revenue. So far as other questions which are now being raised are the same which were subject of consideration by the co-ordinate Bench of this Court at the time of admission. At that time, the appeals were admitted only on one issue by reframing the question of law as reproduced hereinabove. Thus, our entertaining/examining the question for consideration would amount to review of the order dated 18th September 2009 admitting the appeals. This, without any reasons being even suggested by the Revenue, which would warrant the questions being re-urged at the time of final hearing of these appeals. Therefore, we see

no reason to exercise our power under the proviso to section 35G (4) of the said Act in the present facts. Therefore, the other issues on which the Tribunal has decided the appeals in favour of the respondents would remain untouched even if we answer the admitted substantial question of law in favour of the appellant- Revenue. Thus, the substantial question of law as framed in these appeals in the present facts is academic.

8. In the above view of the matter, the substantial question of law is not being answered by us as in the facts of this case. The entire exercise of answering the said question would be academic.

9. Needless to state it would be open to the Court to consider the above substantial question of law in an appropriate case. Accordingly, all seven appeals are dismissed.

(M.S.SANKLECHA, J.) (A.S.OKA, J.)