

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

CENTRAL EXCISE APPEAL NO.210 OF 2018

The Commissioner of CGST and Central Excise,
Nashik Commissionerate ...Appellant
vs.
Raymond Limited ...Respondent

Mr. P.S. Jetly i/b.J.B. Mishra, for the Appellant
Ms. Ginita Bodani i/b.Economic Laws Practice, for Respondent

**CORAM : M.S. SANKLECHA &
M. S. SONAK, JJ.**

DATE : JULY 08, 2019

P.C.:

. At the request of the parties, the Appeal itself is taken up for final disposal.

2. This Appeal under section 35 G of the Central Excise Act, 1944 challenges the order dated 21st May, 2018 passed by the Customs, Excise & Service Tax Appellate Tribunal (Tribunal). By the impugned order, the Respondent's Appeal was allowed.

3. Mr. Jetly, learned counsel appearing for the Revenue urges only the following re-framed question of law for our consideration:

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. The Appeal is admitted on the above substantial questions of law.

5. No other issues arising from the impugned order of the Tribunal is being urged by the Revenue before us.

6. It is an agreed position between the parties that the above issue as urged by the Revenue before us stands concluded by the decision of the larger Bench of this Court dated 14th June, 2019 in ***M/s. Gauri Plasticulture P. Ltd. vs. The Commissioner of Central Excise, Indore in Central Excise Appeal No. 13 of 2007*** and other connected matters.

7. In the above decision this Court had occasion to consider the very question which is being urged by the Revenue before us. On consideration of the above issue the larger Bench of this Court in *M/s. Gauri Plasticulture* (supra) answered the above question in the in favour of the Revenue and against the Assessee.

8. Thus following the decision of the larger Bench in ***M/s. Gauri Plasticulture*** (supra) the substantial question of law above, is answered in the negative i.e. in favour of the Appellant-Revenue and against the Respondent- Assessee.

9. Accordingly, the Appeal is allowed.

(M.S. SONAK, J.)

(M. S. SANKLECHA, J.)