IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

CMA NO.1063 OF 2009

M/s.Sundram Fasteners Limited
Padi,
Chennai. .. Appellant

Vs.

1.Customs, Excise and Service Tax Appellate Tribunal
Shastri Bhavan, Annexe Building
1 Floor, 26, Haddows Road,
Chennai - 600 006.

2.The Commissioner of Central Excise
Chennai - II Commissionerate
MHU Complex, 692, Anna Salai,
Nandanam, Chennai - 600 035.

3.The Commissioner of Central Excise (Appeals)
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

4.The Deputy Commissioner of Central Excise
III Division, Chennai - II Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai - 600 035. .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, to set aside the final order No.718/2008 dated 17/07/08 of Customs, Excise and Service Tax Appellate Tribunal, the first respondent and direct refund of Rs.5,25,665/- to the appellant.

For Appellant : Mr.R.Raghavan
For Respondents: Mr.V.Sundareswaran
Senior Standing Counsel

J U D G M E N T

[Judgment of the Court was made by Dr.VINEET KOTHARI, J.]

Both the learned counsels submit that the controversy involved in the present case is covered by the judgment of the Hon'ble Supreme Court in COMMISSIONER OF CENTRAL EXCISE, MADRAS VS. ADDISON & CO. LTD., [2016 (339) E.L.T. 177 (S.C.)] wherein the Hon'ble Supreme Court has held as under:

> "21. That a consumer can make an application for refund is clear from paras 98 and 99 of the judgment of this Court in Mafatlal Industries (supra). We are bound by the said findings of a Larger Bench of this Court. The word 'buyer' in Clause (e) to proviso to Section 11-B (2) of the Act cannot be restricted to the first buyer from the manufacturer. Another submission which remains to be considered is the requirement of verification to be done for the purpose of finding out who ultimately bore the burden of excise duty. It might be difficult to identify who had actually borne the burden but such verification would definitely assist the Revenue in finding out whether the manufacturer or buyer who makes an application for refund are being unjustly enriched. If it is not possible to identify the person/persons who have borne the duty, the amount of excise duty collected in excess will remain in the fund which will be utilized for the benefit of the consumers as provided in Section 12-D. "

2. In view of the same, the present appeal filed by the appellant M/s.Sundram Fasteners Limited, Chennai, is dismissed in same terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1.Customs, Excise and Service Tax Appellate Tribunal
Shastri Bhavan, Annexe Building
1 Floor, 26, Haddows Road,
Chennai - 600 006.

copy to:

The Section Officer,
V.R. Section,
High Court,
Madras.

+1cc to Mr.R.Raghavan, Advocate sr.96956
+1cc to Mr.V.Sundareswaran, Senior Standing Counsel, sr.96953

CMA NO.1063 OF 2009

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nr 17/12/2019