**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CEA No. 50 of 2018
Date of decision : 03.12.2019**

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, ROHTAK

..... Appellant

versus

VS M/S SOMSUGANDH INDUSTRIES LTD THROUGH ITS AUTHORISED REPRESENTATIVE.

..... Respondent

**CORAM : HON'BLE MR.JUSTICE JASWANT SINGH
HON'BLE MRS.JUSTICE SANT PARKASH**

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Present : Mr.Sourabh Goel, Sr.Standing Counsel, Indirect Taxes for the appellant.

Mr. Deepak Gupta, Advocate for the respondent.

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JASWANT SINGH, J. (Oral)

The Revenue has filed the present appeal under Section 35 (G) of the Central Excise Act, 1944 against the final order dated 30.08.2018 (Annexure P-4) passed by the Customs, Excise & Services Tax Appellate Tribunal, Chandigarh Bench.

The law points raised are as under:-

(a) Whether the impugned Final Order dated 30.08.2018 passed by the Ld.CESTAT is perverse, arbitrary and illegal?

(b) Whether the Ld.Tribunal committed a grave error in placing reliance on the judgement passed by the Hon'ble High Court of Delhi in case of Digipro Import & Export Pvt. Ltd. v. Union of India 2007(350) ELT 145 (Del.)?

(c) Whether during the pendency of the adjudication proceedings (upon remand), the assessee is entitled to refund of the duty voluntarily deposited even before passing of the adjudication order?

(d) Whether the impugned order dated 30.08.2018 passed by the Ld.Tribunal is against the settled position of law and is therefore liable to be set aside?

(e) Whether the impugned order dated 30.08.2018 passed by the Ld. Tribunal is based on surmises and conjuctures and is therefore liable to be setaside?

In brief, the facts of the case are that respondent- M/s. Som Sugandh Industries Limited, Kundli (Private limited company) is engaged in the manufacturing of *Pan Masala, Khaini, Gutka etc*. in their plant situated at Kundli, District Sonepat (Haryana). The DGCEI conducted a search on 20.10.2007 in the premises of the factory and found that there was suppression of production and clandestine removal of the product.

The Excise Department issued a Show Cause Notice dated 31.03.2009 raising demand of a sum of Rs.13,41,65,685/-, which was confirmed by the Adjudicating Authority vide order dated 21.11.2011. The respondent assessee filed an appeal before the learned Customs, Excise and Services Tax Appellate Tribunal, Chandigarh Bench which was allowed vide order dated 8.11.2016 by setting aside the order passed by the Adjudicating Authority and remanding the matter back for fresh adjudication. Since the adjudication process did not make any substantial headway, the respondent assessee filed an application for refund of an amount of Rs.8,15,34,612/- which was voluntarily deposited during the search proceedings and subsequently to avail the benefit of lesser penalty. The application was dismissed vide order dated 29.01.2018 by the Adjudicating Authority, resulting into the respondent filing an appeal before the Commissioner (Appeals). The First Appellate Authority vide order dated 26.07.2018 upheld the order passed by the Adjudicating Authority. Thereafter, the respondent - assessee filed an appeal before the learned Customs, Excise and Services Tax Appellate Tribunal, Chandigarh Bench which vide impugned order dated 30.08.2018 directed the Adjudicating Authority to refund the aforesaid claimed amount within a period of three weeks to the appellant, hence the present appeal.

At the time of hearing, it is conceded that upon remand by the learned Tribunal, a fresh order stands passed by the Adjudicating Authority on 21.02.2019 in favour of the Revenue. The appeal filed by the respondent- assessee stands allowed in favour of the respondent-assessee vide order dated 15.05.2019 passed by the learned CESTAT Chandigarh bench. It is thus urged that the adjudication having been decided in favour of the asseessee, the entitlement for the refund, thereby has backing of the legal process.

Learned counsel for Assessee states that in compliance of fresh order passed by the learned Tribunal, the amount of claimed refund already stands sanctioned by the Department vide order dated 31.07.2019 passed by the Adjudicating Authority. Hence it is claimed by the respondent- assessee that the present appeal would not survive in the facts of the case.

In response counsel for the appellant submits that the department is in process of filing an appeal against the fresh order dated

15.05.2019 passed by the Tribunal. However, it is not disputed that nothing more survives in this appeal.

In view of the aforesaid averments, the appeal is disposed of having been rendered infructuous.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

03.12.2019
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Whether speaking/reasoned Yes/No
Whether Reportable : Yes/No