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

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**CEA No.60 of 2019**
**Date of Decision: 27.02.2020**

The Commissioner, Goods and Services Tax Commissioner, Rohtak

Appellant

Versus

Gawar Construction Limited, Hisar

Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI**
**HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Sunish Bindlish, Advocate
for the appellant.

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**AJAY TEWARI, J. (Oral)**

[1] At the very outset, it was pointed out to the learned counsel for the appellant that one of the members of this Bench [Avneesh Jhingan, J.] had represented the appellant in some un-related sales tax matters and therefore, this Bench would have no hesitation in recusing from hearing this case, however, Mr. Sunish Bindlish, Adovcate says that he would have no objection if we hear the matter.

[2] This appeal has been filed against the order of the Tribunal allowing the appeal of the respondent and thereby setting aside order dated 30.08.2018 of the Revenue rejecting the application for refund of duty which was wrongly paid.

[3] The questions of law claimed are as under:-

*"i) Whether CESTAT's final order No.A/63176/2018-EX [DB] dated 30.08.2018 is fair, legally correct and*

*proper in the light of admission of Refund Claim of Central Excise Duty paid on the goods which are exempted from Central Excise Duty on fulfilling certain conditions which these conditions have not been fulfilled by the claimant?*

*ii) Whether in the facts and circumstances of the case the exemption could be available post when there is no provision and procedure in the exemption notification?*

*iii) Whether the Refund claim is under the proper jurisdiction and also barred by the time limit?*

*iv) Whether the facts and circumstances of the case, the absence of evidence, the claimant has been able to pass the test of unjust enrichment as mandated by the Hon'ble SC in case M/s Mafatlal Industries (Supra)?*

*v) Whether the impugned order passed by the Ld. Tribunal is justified and in accordance with law?*

[4] Brief facts of the case are that the respondent was executing a project which otherwise fell within the exemption notification bearing No.108/95, dated 28.08.1995 which gives exemption from excise duty to the goods supplied to UN or an International Organization subject to certain conditions.

[5] Admittedly, the respondent had purchased Bitumen from different manufacturers and since those manufacturers did not know the purpose for which Bitumen was to be used, they charged excise duty which the assessee paid and subsequently moved an application for refund.

[6] The Assistant Commissioner rejected the claim. The primary reason which weighed with the authorities in rejecting the claim were *(i)* that the notification provided only for exemption and

not for refund; *(ii)* that the claim was time barred and *(iii)* claim was hit by the doctrine of unjust enrichment.

[7] The Tribunal rightly found that merely because the notification is termed as exemption notification, it does not bar any person who may have wrongly paid duty to seek refund. As regards plea of bar of jurisdiction and incompetent authority, the Tribunal found that firstly assessee moved an application to the Director General of Foreign Trade which was a wrong Forum to seek this refund but it did show that assessee was not acquiescent about its claim. As regards plea of unjust enrichment, the Tribunal found that alongwith the refund application, the respondent-assessee had appended a certificate from the Chartered Accountant attesting to the fact that the duty which has been paid, has been borne by the assesee and not passed on to anybody else.

[8] Learned counsel argues that finding of the authorities below regarding unjust enrichment has been wrongly discarded.

[9] The argument has been rejected because, as noticed above, the assessee has supported his claim with the evidence of certificate by the Chartered Accountant but the Assistant Commissioner had rejected it holding that since the excise duty was 12.36%, the assessee must have passed on the burden to the purchaser.

[10] As stated above, in the face of evidence of the assesee and lack of any evidence led in this behalf by the Revenue, this was a purely presumptive finding.

[11] In the circumstances, no question of law much less

substantial question of law arises. The appeal is dismissed.

[12] Since the appeal is dismissed, the pending application, if any, stands disposed of.

**[AJAY TEWARI]**
**JUDGE**

**[AVNEESH JHINGAN]**
**JUDGE**

**February 27, 2020**

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| *pankaj baweja* | 1. Whether speaking/ reasoned | : | Yes / No |
| | 2. Whether reportable | : | Yes / No |