

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE**

RESERVED ON: 04.04.2022

DELIVERED ON: 18.04.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

IA NO. GA/02/2021

IN

CEXA NO. 25 OF 2021

COMMISSIONER OF CENRAL EXCISE, HALDIA COMMISSIONERATE

VERSUS

M/S. TATA STEEL LIMITED (BEARING DIVISION)

Appearance:-

Mr. Uday Shankar Bhattacharya, Adv.

Mr. S. Seal, Adv.

Mr. B. Bhattacharya, Adv.

.....For the Appellant.

Dr. Samir Chakraborty, Sr. Adv.

Mr. Avra Mazumdar, Adv.

Sudheshna Mazumdar, Adv.

Binayak Gupta, Adv.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This appeal by the revenue filed under Section 35 G of the Central Excise Act, 1944 (the Act) is directed against the order dated 13.01.2020 passed by the Customs, Excise and Services Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in Excise Appeal No. 444 of 2012. By the said order, the appeal filed by the respondent assessee was allowed by the Learned Tribunal. The appellant revenue has raised the following substantial questions of law for our consideration:-

- (i) *Whether in absence of any evidence the entire findings of the Learned Tribunal is perverse in holding conclusively that the inputs which have not been received back by the respondent-assessee from the job workers, is 'waster and scrap' only?*
- (ii) *Whether the value of the said non-returned inputs as adopted by the respondent-assessee and confirmed by the Learned Tribunal is correct when the footings of the entire findings is based on some assumptions, without having any conclusive evidence?*
- (iii) *Whether the Respondent is liable to pay an amount equivalent to the Cenvat Credit attributable to the inputs or capital goods by debiting the Cenvat Credit or otherwise if the inputs are not received back within 180 days from the premises of job workers in terms of Rule 4(5) (a) of the Cenvat Credit Rules 2002/2004?*
- (iv) *Whether the Respondent violated and contravened the mandatory provision of Rule 4(6) of the Cenvat Credit Rules, 2002 by not obtaining permission from the jurisdictional Central Excise Authority when the goods are not received*

back into the factory and are removed from Job Workers' premises?

- (v) *Whether the impugned Order of the Learned Tribunal dehors the settled principles of law pertaining to the issue of Res judicata which is not applicable in tax matter?*

2. The facts leading to the present appeal can be summarised as follows:-

2.1 The respondent assessee is a manufacturer of Ball and Roller bearing classifiable under Sub-heading No. 8482 of the Central Excise Tariff Act, 1985 (Tariff Act). The respondent assessee upon availing Cenvat Credit on the duty paid, a part of such raw materials procured by them is sent out for processing work to job workers. After processing is completed, the races are brought back factory which are used in the manufacture of bearings. The waste and scrap generated are not brought back but duty and cess was being paid by the respondent assessee on monthly basis on such waste on quantity as per the standard input-output ratio and value of similar waste and scrap generated in the factory and sold from the assessee's factory. The then Commissioner, Central Excise, Haldia issued show cause notice dated 31.03.2004, referring to Rule 4(5)(a) of the Cenvat Credit Rules, 2002 and stated that the respondent assessee instead of paying such amount equal and through Cenvat attributable to the quantity of inputs not received back, have paid Central Excise duty on the said inputs not received back within the factory treating them as waste and scarp and the Central Excise duty so paid on such value was much less than Cenvat Credit attributable to such quantity of inputs not received back within the factory. Therefore, it was alleged there was short payment of duty and this was on account of wilful

suppression of facts with an intent to evade the Central Excise laws. The assessee was called upon to show cause as to why the excise duty amount should not be recovered under Rule 12 of the Credit Rules read with Section 11 A of the Act, why penalty equal to the Central Excise duty should not be imposed and recovered under Rule 13 of the Credit Rules read with Section 11 AC of the Act and why interest as applicable should not be charged under Section 11 AB of the Act.

2.2 The assessee submitted their explanation stating that in the manufacture of bearings, two types of raw materials are used namely steel tubes and steel bars and the bearings consists of an outer ring and an inner ring and these rings are carved out from the solid steel tubes and bars. The steel tubes and bars purchased by the assessee are sent to job workers for extracting the inner and outer rings and the bearing finally assembled in the assessee's factory at Kharagpur. The assessee also explained as to how they have adopted various standards so as to have better control over the manufacturing process at the job workers end as each type of tube and bar, based on its dimensions are used to produce pre-determined number of rings and in that process certain pre-determined quantity of waste and scrap is also generated. According to the assessee, these quantities are as per industry standards. Thus, the assessee contended that they are aware of the total quantity of waste and scrap that would be generated from a certain dispatch of tubes and bars to the job workers. Further it was stated that challan-wise statement is prepared mentioning the equivalent weight of the rings as per the standards and the balance amount is treated as scrap. The

scraps so generated is normally manufacturing loss and the same is not brought back to the assessee's factory premises as it would be uneconomical to do so and therefore at the end of each month, Central Excise duty is paid on the scrap that was generated based on challan-wise statement. Therefore, it was submitted that there is no case of non-payment of duty on the goods sent for job workers.

2.3 The then Commissioner adjudicated the show cause notice and by a speaking order dated 25.05.2004 dropped the proceedings. Since the findings recorded by the Commissioner would have a bearing on the final decision to be taken in this appeal, we quote the relevant paragraphs of the findings recorded by the Commissioner in the order of adjudication:-

At the outset, I find that the notice have sent tubes and pipes to the job workers for turning the same into rings of certain size as per the terms of contract entered in to by the noticee and their job workers by maintaining conversion standards as prescribed by the noticee firm. While processing the tubes and pipes into rings, scrap is generated automatically at the job workers premises in the form of cuttings, parings, and end-pieces of tubes as generation of waste is an inevitable and inescapable fact in the process of manufacture of goods and if the same is excisable for their specific entry in the CETA then duty is required to be paid on such waste and scrap generated in the course of processing of inputs. In the instant case I find that the quantity of non-returnable inputs/processed inputs are nothing but waste and scrap generated and duly declared as manufactured goods by the notice for

which appropriate CE duty liability has duly been discharged. Hence CE duty is leviable and payable as if the original manufacturer removes them as waste and scrap from the job workers premises on payment of CE duty. On the other hand if such waste and scrap were to be returned to the factory, the same were then required to be removed from the factory on payment of appropriate CE duty. Hence, I observe that there is no loss of duty or evasion of duty on waste and scrap removed from the job workers' end. As per rule 4(6) of CCR, '02. Even waste and scrap can be removed from the premises of the job workers. Hence it is not a case of evasion of duty as alleged in the SCN.

I also observe that pipes and tubes of different sizes and shapes are the basic raw material required for the manufacture of ball and roller bearings. In the process of such manufacture the tubes and pipes are required to be cut into pieces and machined suitably to be converted into rings of different sizes and specifications. Such rings are further processed and fabricated to manufacture bearings. It is not practically possible to cut tubes and pipes into smaller pieces and machined suitably to manufacture "rings" without generating any waste and scrap. It is an impossible proposition to get back the entire tubes and pipes (raw materials) from the job workers' premises after completion of cutting and machining. It has been provided in law that cenvat credit need not be reversed or varied because of generation of scrap and waste emerging out of such inputs while manufacturing the final products. Even if a part of the input gets lost during the process of manufacture cenvat credit need

not be reduced proportionately whether such loss of input is visible or an invisible loss. The generation of ferrous waste and scrap here is in the nature of normal processing to that quantum of input attributable to such processing loss.

I further find that the notice has paid CE duty on scrap generated and cleared from the job workers premises by keeping a separate record for the same and the end-pieces of tubes and bars are nothing but waste and scrap which cannot be processed any further by the manufacture for the purpose of manufacture of finished goods. Even though rule 57 F has been dispenses with w.e.f. 01.04.2000. circulars/instructions issued earlier in connection and consistent with these rules are deemed to be considered as valid and effective under the corresponding provisions of the rules, so far the spirit of rule 14 of CCR, 02 and rule 33 of CE Rules, 02 are concerned.

In view of above discussions I come to the conclusions that the allegations made in the SCN are not sustainable and there is no requirement under law to reverse the credit or pay an amount equivalent to the cenvat credit attributable to that quantity of input not received back within 180 days from the job-workers premises where the inputs were sent for processing.

In view of the above findings, I drop the proceedings in favour of the M/s. TISCO Ltd. (Bearing Division), Nimpura, Kharagpur and withdraw the show cause notice.

2.4 The above order of adjudication had attained finality and the respondent assessee were carrying on their activities in tune with the practise followed by them in the earlier years and the correctness of which was tested for the period from 2002-03 to 2003-04 (up to July 2003) and the Commissioner held that the assessee's submissions were correct and the show cause notice proposing to recover Central Excise duty, penalty and interest was dropped.

2.5 After about 3, years after the earlier show cause notice was issued the new incumbent Commissioner of Central Excise, Haldia Commissionerate, issued show cause notice dated 30.04.2007. The allegations were identical to that of the show cause notice dated 31.03.2004 and the period also overlaps. The period covered in the show cause notice dated 30.04.2007 is from 2002-03 to 2005-06 (up to July 2005). Thus, the period between 2002 to July 2003 would overlap as it was the period for which the show cause notice dated 31.03.2004 was issued which show cause notice was dropped after adjudication. The assessee submitted their reply and the Commissioner by order dated 27.03.2012 confirmed the proposal in the show cause notice and determined the excise duty, levied penalty and interest. Aggrieved by the same, the assessee filed appeal before the Learned Tribunal. The Learned Tribunal after considering the facts of the case as also the earlier decisions of the Tribunal and more particularly the order of the Commissioner dated 25.05.2004 (quoted above) allowed the appeal. The revenue is before us challenging the correctness of the order passed by the Learned Tribunal.

3. We have elaborately heard the Learned Counsels Mr. Uday Sankar Bhattacharya assisted by Mr. S. Seal and Ms. B. Bhattacharya for the appellant and Dr. Samir Chakraborty, Senior Advocate assisted by Mr. Avra Mazumdar, Sudeshna Mazumdar and Binayak Gupta for the respondent and carefully perused the materials placed on record.
4. The first aspect which has drawn our attention is the manner in which the Commissioner of Central Excise had proceeded with the matter. Initially we were under the impression that the show cause notice dated 30.04.2007 has been issued based upon certain facts which had been culled out by the authorities much after the Central Excise duty was paid by the assessee in respect of the waste and scrap not returned to the assessee's factory from the job workers. However, after close scrutiny, we found that the show cause notice dated 30.04.2007 is an exact replica of the show cause notice dated 31.03.2004 except for the period and the amount which was proposed to be demanded as Excise duty. In our considered view, the then Commissioner could not have proceeded to issue such a show cause notice except under certain circumstances, namely upon discovery of fresh material which was not subject matter of any earlier adjudication process and such material came to light upon discovery by the department or upon intelligence and were not culled out from the books of the assessee. This is so because the Commissioner sought to invoke the extended period of limitation by invoking Section 11 A of the Act. On a reading of show cause notice dated 30.04.2007, it is clear that the show cause notice is based upon the facts which are already on record. What is more important and

disturbing is the fact that the Commissioner who issued the show cause notice dated 30.04.2007 was aware of the order-in-original dated 25.05.2004 by which his predecessor who had issued the first show cause notice dated 31.03.2004, after adjudication had dropped the proceedings. Thus, unless the new incumbent Commissioner had fresh materials on hand, he could not have proceeded to issue the show cause notice that too were part of the period overlaps with the period covered in the earlier show cause notice and without dealing with or mentioning the order-in-original dated 25.05.2004. Thus, it is a clear case of abdication of the statutory responsibility cast upon officer. That apart, the revenue has preferred this appeal without even raising any specific ground in the Memorandum of Appeal, as to how the order of adjudication dated 30.04.2007 is sustainable despite the order of the Commissioner dated 25.05.2004. In fact, such a ground can never be taken because the department has accepted the order-in-original dated 25.05.2004 and allowed it to attain finality. Therefore, applying the principles of consistency, the order binds the department as the transaction is identical and there is no fresh materials available with the Commissioner justifying the issuance of the show cause notice dated 30.04.2007. Merely by stating that the earlier order of adjudication came to be passed without calling for any conclusive evidence cannot be a ground to ignore the earlier order of adjudication. Precisely for such reason, we had extracted the relevant paragraphs of the order of adjudication dated 25.05.2004. A perusal of the said order shows that it is a speaking order and the Commissioner has assigned reasons as to why the proposal in the

show cause notice should be dropped. Therefore, the department was wholly unjustified in not only issuing the show cause notice dated 30.04.2007 but also by preferring this appeal. In fact, we are of the opinion that this is a fit case where exemplary cost has to be imposed on the concerned official of the department for attempting to resurrect a settled issue. However, taking note of the persuasive submissions of Mr. Uday Sankar Bhattacharya we refrain from imposing costs.

5. The legal issue as to whether the show cause notice can be issued on the same grounds for the part of the relevant period when the earlier show cause notice was dropped by the Commissioner after adjudication, is no longer *res integra* and in this regard we refer to the decision of the Hon'ble Supreme Court relied on by the Dr. Samir Chakraborty, Learned Senior Counsel in the case of **Jayaswal Neco Limited Versus Commissioner of Central Excise, Nagpur** ¹. Reliance was placed on the decision in the case of **Birla Corporation Ltd. Versus Commissioner of Central Excise** ², wherein it was held that the department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases. It was noted that the legal issue has already been decided in the case of **Hindustan Gas and Industries Ltd. Versus Commissioner of Central Excise, Vadodara** ³, and the department having accepted the principle laid down cannot be permitted to take a stand different than the principles laid down in the earlier case. In this regard, it will be beneficial to refer to the decisions of the Hon'ble Supreme Court in **CCE Versus Bigen**

¹ (2006) 195 E.L.T. 142 (S.C.)

² 2005 (186) E.L.T. 266 (S.C.)

³ 1996 (88) E.L.T. 403

Industries Limited ⁴, **Boving Foress Ltd. Versus CCE** ⁵, **Marsons Fan Industries Versus CCE** ⁶, **Indian Oil Corporation Versus CCE** ⁷. In **Commissioner of Central Excise, Chennai Versus Sivanesan & Company** ⁸.

6. The learned Tribunal held that the earlier decision between the same parties on same facts having attained finality for want of challenge by the department, revenue is precluded from taking different stand in a subsequent appeal. In support of such conclusion the learned Tribunal referred to the decision in **Commissioner Versus Bigen Industries Ltd.**⁹ and **Commissioner Versus Amar Bitumen & Allied Products Pvt. Ltd. & Others** ¹⁰. The decision of the learned Tribunal in **Sivanesan & Co.** was approved by the Hon'ble Supreme Court as the special leave petition was dismissed as reported in **Commissioner Versus Sivanesan & Co.**¹¹ .

7. In **Radhasaomi Satsang Versus CIT** ¹², while considering the proceedings under the Income Tax Act, it was held that strictly speaking, res judicata does not apply to income tax proceedings as each assessment year being a unit what is decided in one year may not apply in the following year but, where a fundamental aspect permeating through the different assessment years and were found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the

⁴ 2006 (197) E.L.T. 305 (S.C.)

⁵ 2006 (202) E.L.T. 389 (S.C.)

⁶ 2008 (225) E.L.T. 334 (S.C.)

⁷ 2006 (202) E.L.T. 37 (S.C.)

⁸ 2007 (209) E.L.T. 65 (Tri.- Chennai)

⁹ 2006 (197) E.L.T. 305 (S.C.)

¹⁰ 2006 (202) E.L.T. 213 (S.C.)

¹¹ 2007 (211) E.L.T. A77 (S.C.)

¹² (1992) 193 ITR 321 (S.C.)

order, it would not be at all appropriate to allow the position to be changed in a subsequent year. The Decision in ***Radhasaomi Satsang*** was applied in the case of ***Commr. of Central Excise and Customs Versus Mundra Port & Special Economic Zone Ltd.***¹³

8. The above decisions would squarely apply to the facts of the case and in fact, the facts before us are much better and stronger than the facts in the decided cases referred supra. We say so because the Commissioner who issued the show cause notice dated 31.02.2004, after receiving the reply from the respondent assessee and after hearing the authorized representative in person by a speaking order dated 25.05.2004 dropped the proceedings. The department did not challenge the said order before the learned Tribunal. That apart, part of the period for which the show cause notice dated 30.04.2007 was issued overlaps the period covered in the earlier show cause notice dated 31.03.2004. Therefore, we can safely conclude that the proceedings initiated in the year 2007, presumably after change of the Commissioner, were without any legal basis and can also be termed as misuse of statutory power conferred on the authority.

9. The next aspect to be seen is as to whether the show cause notice dated 30.04.2007 was issued within the time permissible or was it time barred. Admittedly, the show cause notice was not issued within the time prescribed under Section 11A (1) of the Act. But the Commissioner had invoked the extended period. If such be the case, what are the fundamental tenets which are required to be fulfilled for invoking the extended period of

¹³ 2011 (21) S.T.R. 361 (Guj.)

limitation is required to be seen. For the same subject-matter the earlier show cause notice dated 31.03.2004 was issued. After adjudication the proceedings were dropped, the order attained finality. On the same subject-matter in the year 2007 another notice was issued of which part of the period overlapped. If such is the case, the department can never bring the case of the assessee to be a wilful suppression or mis-statement and if that be the legal position, the extended period under Section 11A cannot be invoked. In this regard, we place reliance on the decision of the Hon'ble Supreme Court in **Nizam Sugar Factory Versus Collector of Central Excise, A.P.**¹⁴ The operative portion of judgment is as follows:-

Without going into the question regarding classification and marketability and leaving the same open, we intend to dispose of the appeals on the point of limitation only. This Court in the case of P & B Pharmaceuticals (P) Ltd. V. Collector of Central Excise reported in (2003) 3 SCC 599 = 2003 (153) E.L.T. 14 (S.C.) has taken the view that in a case in which a show cause notice has been issued for the earlier period on certain set of facts, then, on the same set of facts another SCN based on the same/similar set of facts invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued as the facts were already in the knowledge of the department. It was observed in para 14 as follows:

¹⁴ 2006 (197) E.L.T. 465 (S.C.)

“14. We have indicated above the facts which make it clear that the question whether M/s. Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause notice was issued in 1985 and also at the stage when the second and the third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then taken the view that M/s. Pharmachem Distributors was not a related person. If the authorities came to the conclusion subsequently that it was a related person, the same fact could not be treated as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related person, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s. Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard M/s. Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso

to Section 11A of the Act for making the demand for the extended period.”

This judgment was followed by this court in the case of ECE Industries Limited v. Commissioner of Central Excise, New Delhi reported in (2004) 13 SCC 719 = 2004 (164) E.L.T. 236 (S.C.). In para 4, it was observed:

“4. In the case of M/s. P&B Pharmaceuticals (P) Ltd. V. Collector of Central Excise reported in [2003 (2) SCALE 390], the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked.”

Similarly, this judgment was again followed in the case of Hyderabad Polymers (P) Ltd. V. Commissioner of Central Excise, Hyderabad reported in [2004 (166) E.L.T. 151 (S.C.)]. It was observed in para 6 :

“.....On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and/or it cannot be taken into

consideration as it is not known when that show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct.”

Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second the third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant.

10. Furthermore, on perusal of the show cause notice dated 30.04.2007, we find that there is no allegation against the respondent assessee of wilful suppression or mis-statement though the words “wilfully suppressed” has been used in one place in the show cause notice. Mere use of the words or expression “wilfully suppressed” with intend to avoid duty cannot hold the assessee guilty of wilful suppression. The same has to be established by the department by pointing out as to on what basis they have come to the prima

facie conclusion that there has been wilful mis-statement or suppression of facts. Therefore, mere use of the said words and expression cannot validate the show cause notice. Therefore, the initiation of the proceedings itself is bad in law. Further we note that it not the case of the appellant revenue that the respondent assessee had not disclosed about the manufacturing activities done by them as to how the quantity of scrap generated is determined using a standardized formula which is adopted as an industrial practice and how Central Excise Duty has been remitted. In fact, the Commissioner does not dispute any of these facts but would only state that the Central Excise duty so paid on such value was much less than the Cenvat Credit attributable to such quantity not received back the factory. There is nothing to indicate that the appellant revenue doubted the bona fides of the respondent assessee. In such circumstances extended period of limitation could never have been invoked in the assessee's case. Thus, if Section 11A of the Act could not have been invoked, the question of imposing penalty or levying interest also does not arise. All these factors are taken into consideration and the Tribunal has rightly granted relief to the assessee.

11. The learned Senior Counsel appearing for the respondent assessee relied upon the decision in the case of **Commissioner of Central Excise Versus Rocket Engineering Corporation Ltd.**¹⁵ In the said case the appeal filed by the revenue was dismissed holding that it is not in dispute that the assessee had paid duty on the scrap generated at the factory of the

¹⁵ 2008 (223) E.L.T. 347 (Bom.)

job worker and there is no substantial question of law arising for consideration. The learned Senior Counsel placed reliance on the decision of the learned Tribunal in ***Mahindra Hinoday Industries Ltd. Versus Commissioner of Central Excise, Pune-I***¹⁶ and ***National Engineering Ind. Ltd. Versus Commissioner of Central Excise, Jaipur-I***¹⁷. In our considered view, we may not be required to examine as to the propositions as advocated on behalf of the respondent assessee as we are fully satisfied that the initiation of proceedings commencing from issuance of the show cause notice itself is vitiated and bad in law. Therefore, the substantial questions of law Nos. 3 and 4 as suggested the Revenue are left over.

12. The learned Senior counsel appearing for the respondent assessee submitted that the respondents had taken credit on the raw materials used and when the raw materials are used finished product emerges and along with the finished products waste is generated and this waste is removed on the payment of duty. Therefore, it is submitted that if a product is removed on payment of duty, the input credit can legally be availed and there is no requirement of reversing the Cenvat Credit on a product which was cleared on payment of duty. In support of such contention reliance was placed on the decision of the learned Tribunal in ***Tulsyan NEC Ltd. Versus Commissioner of Central Excise, Bangalore-II***¹⁸ and ***Commissioner of Central Excise, Hyderabad-III Versus Allwyn Auto Ltd.***¹⁹ As observed the earlier, we are satisfied that the initiation of the proceedings by the

¹⁶ 2013 (292) E.L.T. 456 (Tri.- Mumbai)

¹⁷ 2015 (323) E.L.T. 205 (Tri.- Del.)

¹⁸ 2008 (225) E.L.T. 65 (Tri.- Bang.)

¹⁹ 2004 (178) E.L.T. 693 (Tri.- Bang.)

Commissioner commencing to the issuance of the show cause notice was illegal. We have also considered the binding effect of the order of adjudication dated 25.05.2004 which has attained finality. Therefore, for such reason we have left substantial questions of law Nos. 3 and 4 open for consideration in an appropriate case. Hence, we are not expressing any opinion on the effect of the decisions in **Tulsyan NEC Ltd.** and **Allwyn Auto Ltd.** and leave the issue open to be agitated in an appropriate proceeding.

13. For all the above reasons, we find no grounds to interfere with the order passed by the Tribunal. Accordingly, the appeal is dismissed and the substantial questions of law Nos. 1, 2 and 6 are answered against the appellant revenue and substantial questions of law Nos. 3 and 4 are left open.

(T.S. SIVAGNANAM, J.)

I agree

(HIRANMAY BHATTACHARYYA, J.)

(P.A- PRAMITA/SACHIN)