

IN THE HIGH COURT OF ORISSA AT CUTTACK

OTAPL No. 7 of 2010

M/s. Galaxy Medicare Ltd. ***Appellant***

Mr. Hari Radhakrishnan, Advocate

-versus-

The Commissioner of Central Excise, ***Respondent***
Customs and Service Tax,
Bhubaneswar-I

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
30.11.2022

Order No.

06. 1. The present appeal is directed against an order dated 13th August, 2009 of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata Bench in Excise Appeal No.298 of 2009 which in turn had been filed by the present Appellant-Assessee against an order dated 23rd March 2009, of the Commissioner of Central Excise declining the refund claim of the Appellant on the ground of unjust enrichment.
2. A perusal of the impugned order reveals that the appeal was disposed of by the CESTAT merely relying on certain decisions without actually discussing the facts of the case. Further, as pointed out by learned counsel appearing for the Appellant on the issue whether credit notes issued can constitute proof of passing on of the benefit to the ultimate consumer perhaps stands answered against the Appellant by the decision of the Supreme Court in ***Commissioner of Central Excise, Madras v. Addison & Co. Ltd.***

2016 (339) E.L.T.177 (S.C.). However, he states that the Appellant has documents to show that cheques were issued in favour of the ultimate consumers passing on the benefit and, therefore, that ought to have been considered by the CESTAT.

3. In the above circumstances, the Court considers it necessary for the CESTAT to once again examine the appeal filed by the Appellant on merits by passing a reasoned order dealing with all the contentions.

4. For the above purpose, the impugned order dated 13th August, 2009 of the CESTAT is hereby set aside and the Excise Appeal No.298 of 2009 is restored to the file of the CESTAT. It will be listed there for directions on 17th January, 2023. On that date, the Appellant through an authorized representative will remain present together with a downloaded copy of this order. The CESTAT is requested to dispose of the said appeal on merits as expeditiously as possible.

5. The appeal is disposed of in the above terms.

6. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge