IN THE HIGH COURT OF ORISSA AT CUTTACK

OTAPL No. 2 of 2008

M/s. J.K. Paper Ltd. .... ***Appellant***

M/s. P.K. Jena, Advocate and associates

-versus-

The Commissioner of Central Excise & Customs, Bhubaneswar-1 .... ***Respondent***

Mr. P.K. Panda, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
30.11.2022

Order No.

21. 1. The present appeal is directed against an order dated 6th June, 2007 of the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata Bench in Excise Appeal Nos.EDM-03 to 07 of 2005.

2. While admitting the present appeal on 16th September 2014, the following questions were framed for consideration by this Court:

> (i) Whether conclusion of the Tribunal that the Assessee Company had not satisfactorily explained the cash discount allowed to the buyers is not based on evidence and materials on record, has been arrived at ignoring relevant materials on record and is based on conjectures and surmises and by misdirecting itself in point of law and, therefore, the said conclusion is perverse and vitiated in law?
>
> (ii) Whether the Tribunal has misdirected itself in law in coming to the conclusion that the settle law does not permit the appellant to claim for refund when the extra duty burden has been passed on initially to the buyers is correct in law, in view of the ratio of the decisions cited which has not been taken into consideration by the

CESTAT and whether the said finding of the Tribunal is contrary to the materials on record and is perverse and vitiated in law?

(iii) Whether in the facts and circumstances of the case, the customer having never paid the portion of the duty relatable to the cash discount to the appellant which shows the entire incidence of duty has not been passed on to customer, the appellant has rebutted the presumption that every person who has paid duty of excise on any goods shall be deemed to have passed on the full incidence of such duty to the buyer of such goods, as such the appellant has discharge the burden as laid down in teh case of Mafatlal Industries v. Union of India, reported in 1997 (89) ELT 247 (SC) in para 91 of the judgment that such presumption is a rebuttable presumption of law, and not a conclusive presumption ?

3. As far as the above questions are concerned, admittedly they stand covered in favour of the Appellant and against the Department by the judgment of the Supreme Court in ***Purolator India Ltd. v. Commissioner of Central Excise Delhi-III (2015) 323 ELT 227 (SC)***. In that view of the matter, the questions are answered in favour of the Appellant and against the Department. The impugned order of the CESTAT is hereby set aside.

4. Accordingly, the appeal is allowed in the above terms.

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

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin