IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

Central Excise Appeal No. 1 of 2020
[The Commissioner GST & Central Excise, Commissionerate Nagpur-1, Nagpur **..vs..** Maharashtra Metal Powders Ltd., Hingna Road, Nagpur]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S. N. Bhattad, Advocate for the appellant
Mr. Rajesh Ostwal, Advocate for the respondent

CORAM : ROHIT B. DEO AND ANIL L. PANSARE, JJ.

DATED : 25-8-2022

The department has assailed the order dated 22-4-2019 rendered by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (Tribunal) whereby, allowing the appeal preferred by the assessee, the learned Tribunal was pleased to remand the issue to the adjudicatory authority to ascertain whether the process undertaken by the assessee renders the product vulnerable to excise duty.

2. The order of remand is not assailed by the assessee.

3. The department is assailing the order impugned to the extent the remand order is restricted to normal period. Learned counsel for the department, Mr. Bhattad would submit that the assessee clearly suppressed the

contours of the manufacturing process and the learned Tribunal, therefore, committed an error in taking a contrarian view.

4. With the assistance of the learned counsel, Mr. S. N. Bhattad for the department and learned counsel, Mr. Rajesh Ostwal for the assessee, we have scrutinized the reasons recorded by the learned Tribunal, particularly in paragraph 5.5 of the order impugned.

5. The learned Tribunal has noted that as early as on 2-9-2002, the assessee informed the department that the products are Manganese Oxide and Manganese Dioxide which are manufactured by heating and cooling process and that in the entire process, no organic or inorganic chemical is used. The learned Tribunal reasons that in view of the unambiguous disclosure of the details of the manufacturing process, the show cause notice dated 28-1-2010 alleging suppression of fact is not sustainable. It is on such premise that the learned Tribunal directed remand restricted to normal period and not the extended period.

6. It would be apposite to note the rationale underlying the remand order.

"5.5 Coming to the issue of limitation, it has been argument of the Appellants that as early as Sept. 2, 2002 they have informed the department that they make Manganese Oxide which is manufactured by heating and cooling process only and in the entire process no chemical either organic or inorganic is used. The Appellants have also informed that the ore is heated in a coal fire furnace and when it becomes red hot the material is quenched with water and taken out from the furnace. The department vide their letter dated 22nd October 2002 have clarified to the Appellant that the Manganese Dioxide ad Manganese Oxide mentioned in the Appellant letter are classifiable under heading 2602 of CETA 1985 and that they are exempted by virtue of notification 6/2002 C. Ex. Dtd. 01.03.2002. Having clarified in with manner issuing a Supreme Court Notice dated 28.01.2010 alleging suppression of fact is not acceptable. The department sought to invoke extended period stating that the appellants suppressed the fact that they are adding an inert chemical i.e. H2O. This is a long drawn and spurious argument, hence not acceptable we hold that extendable period is not invocable in this case."

7. We are satisfied that no question of law, much less substantial question of law arises in the appeal.

8. We do not find any error much less a grave error in the reasons recorded by the learned Tribunal.

9. The appeal is dismissed.

(Anil L. Pansare, J.) **(Rohit B. Deo, J.)**

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Digitally signed byAVINASH YUVRAJ WASNIK
Signing Date:29.08.2022 19:07