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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-11-2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.1646 of 2016, 1261,1262 & 1264 of 2018

C.M.A.No.1646/2016 :

Commissioner of Central Excise III,
121, Nungambakkam High Road,
Chennai-600 034. ... Appellant

-vs-

M/s.A.R.Metallurgicals Pvt. Ltd. ... Respondent

C.M.A.No.1261/2018 :

The Commissioner of Central Excise,
O/o. The Commissioner of Central Excise, Customs & Service Tax,
6/7, A.T.D. Street, Race Course Road,
Coimbatore – 641 018. ... Appellant

-vs-

1.M/s.Fisher Pumps Pvt. Ltd.

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2.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan Annexe, I Floor,
26, Haddows Road,
Chennai – 600 006. ... Respondents

C.M.A.No.1262/2018 :

The Commissioner of Central Excise,
O/o. The Commissioner of Central Excise, Customs &
Service Tax,
6/7, A.T.D. Street, Race Course Road,
Coimbatore – 641 018. ... Appellant

-vs-

1.M/s.Fisher Pumps Pvt. Ltd.

2.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan Annexe, I Floor,
26, Haddows Road,
Chennai – 600 006. ... Respondents

C.M.A.No.1264/2018 :

The Commissioner of Central Excise,
O/o. The Commissioner of Central Excise, Customs &
Service Tax,
6/7, A.T.D. Street, Race Course Road,
Coimbatore – 641 018. ... Appellant

-vs-

1.M/s.Aaruran Alloys

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2.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan Annexe, I Floor,
26, Haddows Road,
Chennai – 600 006. ... Respondents

C.M.A.No.1646 of 2016 is filed under Section 35G of the Central Excise Act,1944, against the Final Order No.40063 of 2015, dated 19.01.2016, passed by the Custom, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

C.M.A.No.1261 of 2018 is filed under Section 35G of the Central Excise Act,1944, against the Final Order No.40868 of 2015, dated 08.07.2015, passed by the Custom, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

C.M.A.No.1262 of 2018 is filed under Section 35G of the Central Excise Act,1944, against the Final Order No.40869 of 2015, dated 08.07.2015, passed by the Custom, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

C.M.A.No.1264 of 2018 is filed under Section 35G of the Central Excise Act,1944, against the Final Order No.40873 of 2015, dated 08.07.2015, passed by the Custom, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant in all Appeals : Mr.A.P.Srinivas,
Senior Central Government Standing Counsel.

For Respondent in C.M.A.No.1646/2016 : Mr.A.K.Jayaraj

For Respondent 1 in C.M.A.Nos.1261 & 1262 /2018 : Mr.J.Shankar Raman

For Respondent 1 in C.M.A.No.1264/2018 : Mr.Karthikeyan,
for M/s.Swamy Associates.

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Respondent 2 : Tribunal

JUDGMENT

A batch of cases came to be disposed of on an earlier occasion on 04.11.2022 vide C.M.A.No.424 of 2017, wherein we had closed the appeals by preserving the liberty of the appellant, namely, the Commissioner of Central Excise, to revive the appeals, subject to the outcome of the appeals, that are pending before the Hon'ble Supreme Court.

2. These cases were also listed on the aforesaid date. However, as no notice was served on the respondents, we had requested the learned counsel for the appellant to inform the counsel, who appeared on behalf of the respondents before the Tribunal.

3. Mr.J.Shankar Raman, learned counsel for the respondent, who is present, submits that he has no instructions from the respondent. He further submits that possibly the respondent has closed down the business and that it is a futile exercise, inasmuch as these appeals are liable to be dismissed due to the litigation policy of the Government on account of low tax effect. That apart, it is submitted that even if any adverse orders are passed, eventually, the amount will have to be refunded under the new regime under the Central Goods and Services Tax Act,2017.

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4. Though the argument appears to be attractive, we have already remitted the cases back to the original authority in the above batch of cases in C.M.A.No.424 of 2017, the relevant portion of which reads as under :

> *"These appeals are taken up for final disposal and are disposed of in the light of the decision of Gujarat High Court in* ***Indsur Global Ltd. V. Union of India 2014 (310) ELT 833 (Guj.)*** *and subsequent development. The Gujarat High Court had held that Rule 8(3A) of the Central Excise Rules, 2002 was ultra vires the Act. This decision was followed by this Court in the case of* ***A.R. Metallurgicals P. Ltd V. CESTAT 2015 (322) ELT 49 (Mad.).*** *However, decision of Gujarat High Court in* ***Indsur Global Ltd. V. Union of India 2014 (310) ELT 833 (Guj.)*** *has been stayed by the Hon'ble Apex Court as reported in* ***2016 (335) ELT A109 (SC)****. The relevant portion of the order of the Hon'ble Apex Court reads as hereunder:*
>
> *"There shall be interim stay of the impugned judgment and order passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 3344 of 2014 dated 27.11.2014. We restrain the petitioner(s) herein to recover a sum of Rs.87,00,000/- (Rupees eight seven lakhs only) from the respondent till the disposal of the Special Leave Petition (C) C.C. No. 16523 of 2015."*
>
> *2. Considering the above, we are inclined to set aside the impugned order and remit the cases back to the original authority concerned to await for the final orders of the Hon'ble Supreme Court in Special Leave Petition (C) C.C. No. 16523 of 2015 [****Union of India V.Indsur Global Ltd.****]*.

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3. In case, in C.M.A. No. 424 of 2017, the issues governed by the litigation policy of the Government, respondent is directed not to press for any payment.

4. The civil miscellaneous appeals and the writ appeal are disposed of accordingly. No costs. Connected C.M.Ps. are closed."

5. In view of the above, we close these appeals also with liberty to the appellant, as ordered in the above cases. No costs.

(S.V.N.,J.)
(C.S.N.,J.) 21-11-2022

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To

The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan Annexe, I Floor,
26, Haddows Road,
Chennai – 600 006.

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S.VAIDYANATHAN,J.
AND
C.SARAVANAN,J.

dixit

C.M.A.Nos.1646/2016,1261,1262
& 1264/2018

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