Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 11053 of 2016-DB
(ARISING OUT OF OIA-AHD-CUSTM-000-APP-270-271-15-16 DATED- 30.12.2015 PASSED BY Commissioner of CUSTOMS-AHMEDABAD)

C.C.-AHMEDABAD **........Appellant**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD, GUJARAT

VERSUS

HINDUSTAN SHIP BREAKING YARD **........Respondent**
Plot No. 152/153, Sby Alang,
BHAVNAGAR-GUJARAT

AND

CUSTOMS Appeal No. 11054 of 2016-DB
(ARISING OUT OF OIA-AHD-CUSTM-000-APP-270-271-15-16 DATED- 30.12.2015 PASSED BY Commissioner of CUSTOMS-AHMEDABAD)

C.C.- AHMEDABAD **........Appellant**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD, GUJARAT

VERSUS

INDIAN METAL TRADERS **........Respondent**
2266/3, SHIV SOCIETY, B/H CIRCUIT HOUSE,
BHAVNAGAR-GUJARAT

APPEARANCE:
Shri. Tara Prakash, Deputy Commissioner (Authorised Representative) for the Appellant
Shri. Amal Dave, Advocate for the Respondent

CORAM: HON'BLE MR. RAJU MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

Final Order No. A/ 10942-10943 /2023

DATE OF HEARING: 19.04.2023
DATE OF DECISION:19.04.2023

RAJU

This appeal has been filed by Revenue against order of Commissioner (Appeals) remanding the matter to the original adjudicating authority to decide the issue after examining the Circular No. 37/96 dated 03.07.1996 and also after considering the decision of Hon'ble High Court of Gujarat in the case of Shivam Engineering Company reported at 2014 (310) ELT 641 (Guj.).

2. Learned Authorized Representative has pointed out that the remand order directed the lower authority to take decision after considering the decision of Hon'ble High Court in the case of Shivam Engineering Company (supra). He argued that the matter regarding Shivam Engineering Company (supra) has been agitated by Revenue before Hon'ble Apex Court and the matter has been admitted by the Hon'ble Apex Court.

3. Learned counsel appearing for the Respondent pointed out that the decision of Hon'ble High Court in the case of Shivam Engineering Company (supra) has not been stayed by the Hon'ble Apex Court and therefore, this regard, it should be followed.

4. We have considered the rival submissions. We find that so long as the decision of Hon'ble High Court in the case of Shivam Engineering Company (supra) has not been stayed or set aside, it needs to follow. However, it has been pointed out by learned authorized representative that an appeal has been filed in the Hon'ble Apex Court and the same has been admitted. In this background, we do not find any merit in the argument of Revenue.

5. The lower authorities will take into account the Circular No. 37/96-Cus dated 03.07.1996 and decision of Hon'ble High Court in the case of Shivam Engineering Company (supra) and any further development that has been taken in the said case. The appeals are dismissed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

NEHA