

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11813 of 2013-DB

[Arising out of Order-in-Original/Appeal No 22-2013-STC-SKS-COMMR-A-AHD dated 13.02.2013 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD]

Commissioner of Central Excise & ST, Ahmedabad Appellant

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

VERSUS

Patel Inn And Travel Pvt Limited Respondent

8, Shroff Chambers, Opp. Navchetan School, Paldi,
AHMEDABAD, GUJARAT-380006.

APPEARANCE :

Shri Tara Prakash, Deputy Commissioner (AR) for the Appellant
Shri S.J. Vyas, Advocate for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 05.06.2023

DATE OF DECISION: 15.06.2023

FINAL ORDER NO. 11263/2023

RAMESH NAIR :

This Revenue's appeal is against the order-in-appeal dated 13.02.2013 whereby the matter was remanded to the Adjudicating Authority by learned Commissioner (Appeals). The grievance of the Revenue is that the Commissioner (Appeals) had no power to remand the matter whereas he is supposed to pass the final order therefore, the order is not legal and proper.

2. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the grounds of appeal.

3. Shri S.J. Vyas, learned Counsel appearing on behalf of the Respondent submits that as per various judgments passed by this Tribunal relying on the Hon'ble Supreme Court judgment in the case of *MIL India Ltd vs. CCE, Noida - 2007 (3) TMI 8 Supreme Court* held that the Commissioner has power to remand the matter therefore, the order remanding to the Adjudicating

Authority deserve to be upheld. He placed reliance on the following judgments:-

(a) CST, Ahmedabad vs. Torrent Pharmaceuticals Limited – 2023 (3) TMI 1127- CESTAT AHMEDABAD

(b) CST vs. Associated Hotels Limited – 2014 (4) TMI 406 – GUJARAT HIGH COURT

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that this issue has come up time and again before this Tribunal and this Tribunal has taken a consistent view in view of the Hon'ble Supreme Court judgment in the case of MIL India Limited (supra) and Hon'ble Gujarat High Court judgment in the case of Associated Hotels Limited (supra) whereby it was held that Commissioner (Appeals) has indeed power to remand the matter to the Adjudicating Authority. Recently, this Tribunal in the case of CST, Ahmedabad vs. Torrent Pharmaceuticals Limited (supra) dealing with the same issue passed the following order:-

“The issue involved in the Revenue's Appeal is that whether the Commissioner (Appeals) has the power to remand the matter to Adjudicating Authority.

2. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that per the Section 35A of Central Excise Act, 1944 / Section 128 A (3) of the Customs Act, 1962 with effect from the 11.05.2001 after amendment in the said section the Commissioner (Appeals) has no power to remand the matter to the Adjudicating Authority. Therefore, he erred in remanding the matter to the Adjudicating Authority.

3. Shri Jigar Shah, learned Counsel appearing on behalf of the Respondent submits that the issue is no longer *res-integra* as held by the Jurisdiction High Court in the case of Associated Hotels Limited- 2015 (37)STR 723 (Guj.), which was followed by this Tribunal in Final Order No. A/10860 -10864/2020 dated 18.03.2020 in the case CCE vs. Adani Power Limited that the Commissioner (Appeals) indeed has power to remand the matter to the Adjudicating Authority. Therefore, the Revenue's appeal is not maintainable.

4. We have carefully considered the submission made by both sides and perused the records. As per the judgment of the Hon'ble Jurisdiction High Court of Gujarat in the case of Associated Hotels Limited (Supra) in which the support was taken from the Hon'ble Supreme Court Judgment in the case of Mil India Limited vs. CCE, Noida- 2007 (210) ELT 188 (SC). On this settled position this Tribunal in the case of CCE vs. Adani Power Limited case vide Final order No. A/10860 -10864/2020 dated 18.03.2020 dealing with one of the issue of remanding power of the Commissioner (Appeals) held as under:-

“6. As regards the issue that whether Commissioner (Appeals) has power to remand the matter to Adjudicating Authority, we find that this being a case of refund of service tax, clearly covered by the ratio of

Hon'ble Gujarat High Court judgment in the case of Associated Hotels Limited (supra). In the said judgment, the Hon'ble High Court has also referred to the judgments of Hon'ble Supreme Court in the case of Mil India Limited vs. CCE, Noida - 2007 (210) ELT 188 (SC). Therefore, we are of the view that the learned Commissioner (Appeals) has power to remand the matter to the Adjudicating Authority, therefore, on this count also, Revenue's appeal does not sustain.

7. In view of the above judgment of this Tribunal, the Revenue's appeals are not sustainable. Hence, we uphold the impugned orders."

5. In view of the above decision given by taking support of Hon'ble Gujarat High Court in the case of Associated Hotel Limited (Supra) and Hon'ble Supreme Court Judgment in the case of Mil India Limited (Supra), the Commissioner (Appeals) has indeed power to remand the matter. Accordingly, there is no error in the impugned order to the extent the matter was remanded to the Adjudicating Authority. Accordingly, the Revenue's appeal is not maintainable and the same is dismissed."

5. In view of the above judgment, it is settled that the Commissioner (Appeals) has power to remand the matter to Adjudicating Authority. Accordingly, we do not find any error in the order of the Commissioner (Appeals) therefore the same is upheld. Revenue's appeal is dismissed.

(Pronounced in the open court on 15.06.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)